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PERSPECTIVES IN POLITICAL SCIENCE, 1903-1928[1]

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The American Political Science Association was founded December 30, 1903, at New Orleans. Its organization was the outgrowth of a movement looking toward a national conference on comparative legislation. A group having the matter in charge held a meeting in December, 1902, at Washington, the call for which stated that the formation of an American Society of Comparative Legislation had been suggested as "particularly desirable because of the complexity of our system of federal government." Interest in legislation in general and in the problems presented by the law-making activities of the federal and state agencies in particular was, therefore, the starting point from which proceeded the wider range of interests which gave rise to this Association. The preliminary meeting in Washington indicated that if a new national society were to be formed it might be well to enlarge its scope so as to embrace the whole of political science, of which comparative legislation is an important part. A year later, thanks to the coöperation of the American Historical Association and of the American Economic Association, which were having joint meetings in New Orleans, opportunity was given to the group to form an organization, the members of which were in large part members of one or both of the older Associations. The adoption of the constitution

[1] Presidential address delivered before the American Political Science Association at Chicago, Ill., December 27, 1928.

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of this Association was the result. In a way, therefore, the American Political Science Association is the god-child of the American Historical and the American Economic Associations. All but two annual meetings have been held jointly with one or both of the older bodies, indicating not only a factor of common membership but also a large measure of common interests and kindred endeavors.

In the first presidential address, Professor Goodnow admirably set forth the aim of the Association: "to assemble upon common ground those persons whose main interests are connected with the scientific study of the organization and functions of the state."

I

The current of the past quarter-century has shown in greater and greater degree the interdependence of the social sciences, as well as new dependence upon the results gained in other fields of learning. All of the social sciences, save history, if history be one of them, labor under the common difficulty of having a terminology derived largely from popular usage, so that much of the discipline of each has consisted in the endeavor to impart to words and phrases of popular speech an exact, consistent, and logical content and implication. From this distance in time, to one who admittedly has not kept pace with the development of economic thought, the economics of the earlier period remains in the memory as a more or less confused logomachy of a long series: wealth, capital, rent, and value. In political science there has been a similar one: the state, nation, government, administration, and, above all, sovereignty. Not being an economist, I assume that by this time these fundamental ideas have reached a fairly determined stage of exactitude and general agreement, although now and then one may seem to hear reverberations and echoes of the earlier disputations. If one were impatient with the iron law of wages, he found little solace in the Austinian theory of sovereignty. If he has been wearied by an Austrian theory of value, he may now seek refreshment in an Austrian theory of sovereignty.

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History, however, has had none of these hurdles of terminology to overcome. Twenty-five years ago the controversy was still on as to whether or not history was indeed a science. How, if at all, this dispute was settled is not clear. During the decade now derisively called the "Gay Nineties," but which called itself *fin de siècle*, Clio was forsaken and even relegated to the lumber-room. She has now been restored and not infrequently decorated in colors, which, if not in the Greek manner, are at least challenging to the eye and stimulating to the imagination. If not always upon a pedestal, as of yore, it may be because of her movement in a syncopated rhythm, the name and nature of which were unknown to her sister muse.

Every generation undertakes to write history in its own image, but the present economic interpretation of history is not original with this acquisitive generation, nor with Karl Marx, but it may be ascribed to that more understandable, because more human, philosopher, Sancho Panza, who perceived an everlasting dichotomy of mankind among those who have and those who have not. Following a pragmatic lead, Panza ranged himself upon the side of those who have. We moderns, in this respect seeking justice rather than advantage, rather more generally incline to the other side; yet some are like Simeon Stylites, who, according to the Pilgrim's Scrip, "saw the hog in human nature and straightway took human nature for a hog."

The economic motive has assuredly made its impress upon all of those subjects which are grouped as political science, but our twenty-five years have witnessed a succession of other influences upon them, affecting partly their conduct, partly their methods, and partly their theory. If we regard political science as that body, or rather mass, of specific descriptions of those phenomena of human relationships called political (not even yet very accurately defined or determined) plus the generalizations sought to be drawn from these descriptions, we are admittedly in a field of very ancient origin. Political self-consciousness began with the Greeks, and probably little of its expression has been lost. Yet, beginning with Aristotle, one seeks vainly for any generalization to be drawn from the great range of these

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phenomena which at all approximates the universality of a natural law in the physical world. The state which we know is not of ancient but, considering the age of mankind, of recent appearance, not more than four centuries ago. The whole edifice of political theory is modern because of the new institution. Those processes and conclusions of thinkers which have gone to make up political theory have ranged about momentous changes, desired or accomplished, which have demanded justification or invited attack. Aristotle's generalizations were from the whole of the political world, it is true; but that world was Greece. Bodin's theory of sovereignty was a juristic rather than a political apologue for the new territorial and national state. The state of nature, basis of a restated law of nature and of natural rights, was variously described, depending upon successive relations, fanciful or real, of contemporary travellers in the New World. The social compact doctrine, corollary of the state of nature, was a justification of revolution, either after the fact, as with Locke, or before it, as with Rousseau.

Even those two so-called American inventions in political theory were set forth in order to solve a specific problem, that of a divided sovereignty, to support the institution of a national state of a new kind, and that, ascribed to Calhoun, of concurrent pluralities, for the more effectual protection of minorities in such a state. The tripartite division of governmental functions, which has had such far-reaching effects that it has produced a distinct system of government, afforded a practical method of adjusting and compromising divergent plans in the federal constitutional convention. It was justified, it is true, by appeals to Montesquieu's famous passage, but, as is well known, the exposition of the French jurist and historian had a definite purpose and was based upon a misapprehension, or misstatement, of English conditions, then undergoing fundamental changes. This doctrine of Montesquieu, once a dogma of constitutional liberty, has come to be, in the minds of those who in these days look for administrative excellence, a serious impediment to governmental efficiency in the circumstances of democratic incompetence. The doctrine of natural rights,

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first a program of radicalism and a valuable *modus vivendi* in a pioneer era and then imbedded in many state constitutions, has not infrequently appeared as the last refuge of privilege and reaction in a society of increasing social and industrial complexity. The absolutist theory of the state, which so dominated German thought throughout half a century, and the usually accepted academic doctrine as taught in the United States, was the expression of the hope and realization of a new German national unity, the clue to which had been given by German philosophers of an earlier time. The conceptions of democracy and of nationality have had no fixed content. Each has varied in time and in space as the innumerable factors have varied. Progress itself, tending to be viewed by each people in terms of its own desires and ambitions, has no fixity as a concept, and its recent historian seems to find in it little more than an optimistic synonym for change.

How remote seem the days when Freeman's dictum, "history is past politics and politics present history," was painted in letters large upon the walls of Adams's seminary-room at the Johns Hopkins University! The first part was long ago discarded by historians. History is as much more than the record of political happenings as it is the recounting of military campaigns or of dynastic arrangements. Economics and sociology, in so far as they attempt the understanding of the present, are as much of present history as is politics, unless, indeed, we give to politics the comprehensive meaning which Aristotle gave to it. What distinguishes history from the social sciences that deal with the present is that history deals with events which are fixed—with the past which is irrevocable. It is true that the record may never be complete; it is always subject to revision. The variation, however, is in the observer and interpreter of the record as well as in the record itself. The effect is that each generation rewrites history.

In the social sciences, movement and change take place while the observations are being taken, and while these phenomenal changes are occurring, the observer changes. He changes as to what he desires to see, and these desires have no

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common denominator. It may be for the purpose of correcting error due to this shifting base that in political thinking there has for so long a time been an appeal to, or dependence upon, some body of thought outside that which we call political. These would tend to hold the observer fast. Or, to put it in another way, political science has never been a self-contained body of thought, but has sought outside itself its primary assumptions and major premises, from religion, ethics, philosophy, or from the current *clichés* of natural science. Such tendencies are of such long standing that we may almost call them traditional.

Jeremy Bentham, philanthropist in the literal meaning of that word, was one of the most successful reformers in history; for hardly a reform in Great Britain during more than a half-century but what can be traced to him and his influence. But he was in no sense "historically-minded." An accurate perspective is at once a requisite of historical-mindedness and of a sense of humor. Both of these may be handicaps to a reformer. They are sometimes paralyzing to the reforming effort. Bentham's success as a reformer may have been due in part to his freedom from these handicaps. He was wholly occupied with the shortcomings of his present, which were not to be justified merely because "they had come to be." In a generation still describing political phenomena in terms of Newtonian physics, it was he who directed attention to the dangers of reasoning from analogy in politics.

This way of thinking is as old as the art of government itself, for the very word *to govern* comes in by analogy from navigation. The body politic gave rise to all sorts of analogies to the human body which have been as assumptions changing, according to the accepted criteria of anatomy and physiology, from John of Salisbury to Herbert Spencer. We smile now at Bluntschli's insistence that the state is a man, the church female. Woodrow Wilson was fond of calling attention to the dependence of the framers of the Constitution upon the cosmic theories of their age. Newton is reflected in our federal Constitution, as he is in Addison's *Spacious Firmament on High.* The hard-headed

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Bagehot of Lombard Street undertook the task of interpreting politics in terms of the new Darwinism. Political thinking, playing round the idea of progress, has for over half a century sought support in certain assumed principles of organic evolution. But while it was doing so the doctrines of evolution have been recast. "Struggle for existence" and "the survival of the fittest" are phrases which have furnished many an argument, imperialist as well as egoistic. Today, reasoning from fancied analogies to biological evolution is out of style. No one appears as yet to have applied to politics the mutation theory of De Vries.

In these days "everything is relative." I confess inability to assess the responsibility for this so readily accepted proposition to Einstein, for I do not know what the Einstein theory is, further than that it is said to disturb somewhat the Newtonian statement of gravitation: *de minimis curat lex naturae.* The writings of Haldane, however, indicate the implications outside the realm of physics which the philosophical statement of relativity has produced. A popular stereotype has not been long in making its appearance.

Political science always has its theory, and no doubt that theory usually seeks its metaphysic. Political theory is not identical with political philosophy, but has always to some extent rested upon it, just as jurisprudence rests upon legal philosophy and both political and legal philosophy spring from philosophy without an adjective. What is called pragmatism (lacking, we are told, a metaphysic) is with many an avenue of escape from metaphysical implications, if not from philosophical starting-points. The Great Cham himself might have been a philosopher, Boswell tells us, but for the fact that cheerfulness was always breaking through.

Sociology, endeavoring to find an orderly arrangement of all human activities, not only has effected an enormous influence upon our ways of viewing political phenomena, but it has helped to create a school of political science and a system of jurisprudence. Anthropology and folklore have undoubtedly thrown great light upon the origins of political association, as a result

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of which certain political scientists have made generalizations dangerously broad as to the origin of the state.

More significant for the record of the past quarter-century is the influence of psychology upon ways of thinking in political science. To appraise this influence is not altogether easy. One is confronted at the outset with the divergences among the psychologists themselves, among the behaviorists (of whom there seem to be distinct varieties), the functionalists, and the *Gestalters*, so that it is well for the political scientist to be upon his guard. The solid substance of so-called "mass-psychology" can hardly as yet be called impressive and it is unsatisfactory to interpret political actions in terms of it. Many political scientists are inclined to think that the most effective political psychologist is a certain type of practical politician who has never heard of Wundt, or James, or Freud, or Watson.

The years since this Association was founded have seen a vast increase in the number, kinds, and complexities of the functions of the state and of government. During these years there has intervened an era which has disturbed the course of political ideas among professional and lay thinkers to an extent comparable only with those of the Reformation and the French Revolution. While the sphere of government was increasing throughout the world for more than a generation before the beginning of the Great War (a process reflected in the increasing bulk of the statute book on the one hand, and of the budget on the other), political theorizing was attacking the traditional formulas of sovereignty. Just before the World War broke out Ernest Barker wrote a brilliant essay called *The Discredited State*. His conclusion was that the "discredit" of the state was a sign that it had done its work well and was doing its work well. Duguit had indicated a substitute for sovereignty in the rendition by the state, through government, of general services. Syndicalists had affirmed a pluralistic state, or else had denied the reality of any. The law of nature had had a rebirth, which was itself, by implication if not by direct averment, a challenge to the absolute state. Just before the war one might have concluded from much of the literature of internationalism that the

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claims of nationality were upon the wane, and that the Nineteenth Century was the century of the rise and fall of nationalism.

Barker's essay was printed in 1915, with a note not without historical value, re-reading it at this distance of time. "It is curious," he wrote, "how differently one would have written in January, 1915. Germany has shown that the Sixteenth Century has not been altogether overpast—at any rate in her own case. And yet the fundamental questions remain, and will re-emerge when the waters abate. Meanwhile the State is proclaiming 'It is necessary to live.' We have forgotten that we are anything but citizens, and the State is having its high midsummer of credit." Nearly four years were to pass after this note was penned, during which the state asserted itself as never before. "The high midsummer of credit," if one may look back upon those years with the feeling that this was a phrase of enduring significance, involved the assertion of state-will and state-intolerance, expressed in governmental regulation and exaction to an extent never before dreamt of. During the war all theories went by the board, and the "state mobilized for war" was a fact before which constitutional guaranties and restraints simply faded away. The war revived nationalism, and the peace was settled upon the basis of an alleged nationalistic *status quo*.

Yet the war also produced opposite effects. In Russia a political organization came forth, and still exists, impossible to define according to the older categories of the state. Along with the new nation-states appeared a new internationalism expressed in the League of Nations Covenant. New theories of sovereignty and of law have sought to find the basis of a single legal order in the world. On the one hand, autocracies have given way in favor of new constitutional democracies, but on the other, new autocracies, appealing at once to nationalistic exclusiveness and greater governmental efficiency, have, at least for a time, silenced the claims of democracy. From both sides we are treated to new theories and new philosophies of the state and government.

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We find ourselves, therefore, in a difficult and very perplexing situation. During the past twenty-five years every assumption of political theory, of the claims of democracy, of limitations upon government, even of the right of the state to be, has been challenged. During the same period, however, the claims of the absolute and intolerant, but not "discredited," state, have been made effective in action as never before.

For political science it might appear that this is a record of confusion worse confounded. Clarification is admittedly no easy task. We have become freed from that traditionally enthralling illusion—the illusion of finality. *Tempora mutant,* not only, but equally important, *nos mutamur in illis*—these are fixed in our consciousness. Not even the theory of a rigid constitution withstands them. If no major premises remain universally valid as to state and government, it is because, notwithstanding Machiavelli and Bacon, we have not been able to discover and to formulate any universally valid dogmas. Although political phenomena have been observed, recorded, discussed, theorized upon, and philosophized about for nearly three thousand years, we have even yet no unvarying generalizations akin to natural laws in the physical world. It is in this sense that we may interpret the opinion of John Adams as expressed in 1813 to Thomas Jefferson: "While all other sciences have advanced, that of government is at a stand, little better practiced now than three or four thousand years ago." In this respect the political scientist is in a worse situation than the economist, who, as soon as he discovers a natural law in the economic world, seems to set about to abate its operation through human enactment.

The sphere of state action and governmental function touches every sort of human interest and activity. Now the services of the state require a multitude of different and specialized agencies which have little in common except that they perform state services. At least so far as our own experience goes, we have largely committed the direction of these agencies to those whose discipline has been that of the law.

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II

In a recent presidential address to this Association, the speaker, with that brilliance which we have long been led to expect from him, deplored the lack of creative work in our field. He found us under "a heavy burden of acquired rights and servitudes," first, that of the lawyer; second, that of the historian; third, that of our universities, affecting the present quality of research. "The lawyer is always looking backward," he said, and, also, "the historian looks backward even more intently than the lawyer." The universities do not appear to him to look at all, while research looks with myopic vision. As was said, the habit of thought in politics, in the United States at least, is largely of legal derivation. Yet, judging from results, those American lawyers who have most molded that thought have not been without vision. Hamilton, Webster, and Lincoln were more than lawyers, but so were John Taylor, Calhoun, and Douglas. To stop, however, with this confession and avoidance would be somewhat unfair to those who are giving direction to the course of legal thought in this country—Holmes and Cardozo, to name but two—and to those also who are seeking to free legal education from its heritage of scholastic thought. Insisting upon a background of social science, and with the idea that the law is social engineering in its best sense, several law schools, with the coöperation of many of the leaders of the American bar, may well interpose a caveat to Mr. Beard's spritely generalization.

The assertion is made that the historian, "looking intently backward," makes but few weighty contributions to political science. But if, as he says, "with the possible exception of John Taylor's monumental *Inquiry*, no single immortal work in political science has been written in America since *The Federalist*," the indictment against the historians does not seem severe. Just what makes a work immortal, or even "monumental," cannot be objectively and definitely determined. A political scientist may nevertheless be excused for placing Thucydides and Plutarch alongside of Plato and Aristotle, and the *History of Florence* and the *Observations on the Decades of Livy* by the

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historian next the *Prince* by the realist-politician, both the work of the same many-sided Machiavelli. While the immortal *Federalist* was the work of three lawyers, Bryce's *American Commonwealth* came from a scholar at once lawyer and historian. And, after all, one can hardly impute to the historian an obligation, either professional, artistic, or moral, to make contributions to political science. If the historian should succeed in doing so, so much the better for political science, not necessarily so for history. If he does not, it is rather our misfortune than his fault, for he has his own job to do, whether it be an essay upon the administration of the Petty Bag Office, or on the social history of a Nebraska township. With these the political scientist has no more quarrel than with an anthropologist's inquiry into the contents of a kitchen-midden, or the philologist's researches into the Semitic elements in the Bantu dialect, if there be such.

With economics the situation is different. The relations of government with agriculture, industry, and commerce bring political science and economics upon common ground. Taxation, the regulation of public utilities, and transportation are but three of the many subjects which invite approach from both sides. The increasing importance of this type of question is of itself enough to account for the added dependence which political science has upon economics. From the standpoint of administration, the relation is the other way, so that the dependence is mutual. What is true of economics is true also of sociology. The statistical method so largely adopted by the economist and sociologist is recognized by the political scientist as an important instrument in certain of his fields wherein phenomena are observable in the mass. Business has no doubt much to learn from economics, but administration has still much to learn from business, to the extent that the ideals of efficiency in governmental administration are largely the standards of the modern world of business.

A comparative study of the catalogues of American colleges and universities during the past quarter-century reveals the condition of disjointedness which political science presents

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today. Twenty-five years ago what courses there were in political science were not only relatively general in content, but more or less related. Considering only curricular offerings to the undergraduate, a chair of political science extends beyond the settee to the bench, nay, to a series of benches. The curriculum will provide courses in government: American, federal, state, local, municipal, British, continental European, and comparative; then in administration: federal, state, local, municipal, and comparative; with, in addition, law: constitutional, international, administrative, with international relations, international organization, and international administration; with courses in political parties thrown in for good measure, in every case with a text-book in the offing. Our college and university catalogues run to seed with courses in political science. No one can be expected to profess them all. The man who is engaged in some of them may have little in common with him who is pursuing others. Municipal administration, for example, has less kinship with international law than it has with taxation. The principal bond of connection is that both are traditionally branches of political science. The conclusion may well be that here, as elsewhere, the French are more logical than we in placing all of these studies in a group as *les sciences politiques*.

The graduate schools follow the system of diversity of courses still further—courses and more courses—with a doctoral dissertation into the bargain. We are, indeed, under no delusions as to the latter. It is a form of exercise, the purpose of which is to ascertain the ability of the relatively mature student to investigate and report through independent exertions upon a self-contained topic. The results may at times be depressing to the reader, and even deadening to the imagination of the author. But even more deadening is that long range of courses taken for credit, by graduates, as well as by undergraduates, with the approved apparatus of text-books and collateral readings. The impact of educational administration has resulted in a system in which semester-credit-hours, of a certain quantity and reputed quality, are sought for *ad nauseam*. The system deprives

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the student of the opportunity for broad and leisurely reading, even if the succession of many courses has not already killed his desire to read. An inquiry among doctoral candidates as to what books of known high quality they have read through while graduate students, simply because they wanted to read them, might elicit some surprising answers. If the man responsible for the training of graduate students can, by example and precept, by allusion rather than by direction, create an appetite for reading, he might stimulate the constructive imagination which a certain type of research tends to deaden. In addition, the beginner may be brought to the realization that the great minds are not necessarily wholly of the present, and that *le dernier cri* is not the same thing as the last word.

The past twenty-five years have witnessed great changes in the attitude of universities toward advanced students, actual or prospective. At the beginning of this century, the number of fellowships and scholarships offered was comparatively small. In most of the universities offering graduate work, the man receiving pecuniary aid was the exception, the majority were not dependent upon the university for their maintenance. Today, with the great increase in the number of fellowships, with assistantships, with part or full time instructorships, the graduate student who is wholly dependent upon himself is a rarity. It is not at all for the purpose of decrying a system of substantial aid to the unusually promising mind that this observation is made. It is said because there is great danger in this country in that, by subsidizing so generally all aspirants to advanced study, the graduate schools may find themselves in the situation of some theological seminaries, which have come practically to assure financial aid to every applicant—a policy which is far from one attracting the best minds.

While graduate schools have been developing according to their own ways, bureaus of research have made their appearance, frequently independent of universities, and generally operating in a special field, as in municipal, state, or federal administration. Independently organized, separately financed, and skillfully conducted, such institutions would no doubt gain

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little, and lose much, through university support. A sound university policy toward them would seem to be one of sympathy and coöperation, but not of control. Such bureaus, being usually those of applied research, should stimulate pure research in the universities and not lessen it.

Another great change is to be seen in the recent and apparently limitless aids given to research by the various foundations. If in each year the Social Science Research Council can start one genius along the pathway of fearless inquiry it will have done well. It would, however, be disastrous if the generosity of the foundations should tempt the universities to abdicate one of their primary functions. So far, aids to research projects have been given in the main to younger men. If the universities should in any large measure unload their responsibilities for the prosecution of research by their respective staffs upon the foundations, so that the younger men come to look principally to an outside agency for substantial encouragement, the effects will be deadening to the true spirit of universities. With the constant pressure upon university budgets by administrative needs and velleities, such a situation is not altogether improbable, if indeed some indications of the kind are not already observable.

Looking over the list of eminent American historians, it is to be noticed that few have occupied academic positions. Bancroft, Prescott, Motley, Parkman, Rhodes—none of them professed history. But it is also true that none of these lived in an environment wherein a heavy "teaching-load" (phrase of iniquitous import, as smug sounding as foot-pounds or ton-miles!) and a small salary would have made anything more than a desire of accomplishing a *magnum opus* a bitter irony.

III

Those who have labored in the ever-widening field of political science during the life of this Association may not have achieved immortality by their efforts. The record is not to be despised on that account. In the face of bewildering changes, in widely divergent fields, with greatly different interests, with methods

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which vary as the fields are different—with all of those shortcomings, as to which many may feel that too much stress has been laid—the contributions of American scholarship to the political sciences have been as substantial as they are various.

The American Political Science Association, as an unofficial national agency for the meeting together of those whose main interests are connected with the scientific study of the organization and functions of the state, has, it is believed, justified the hopes of its founders. Its scope has widened as the fields of interest have widened. It has sought to provide a meeting-ground for those within and without the academic profession. Each group has something to give and something to receive from the other. It has no cause to promote except the search for and entry of truth. "I like better that entry of truth," said Bacon, "which comes peaceably with chalk to mark up those minds which are capable to lodge and harbor it, than that which cometh with pugnacity and contention." It has no creed other than that of tolerance in matters so largely of opinion. It enters upon its second quarter-century modestly proud of its past and grateful to those who, having encouraged and sustained it, have made its past possible and its future certain.

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AMERICA'S RÔLE IN THE LEAGUE OF NATIONS

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I. THE ATTITUDE OF THE GOVERNMENT

Whatever may be the present attitude of the people of the United States toward the League of Nations, it now seems clear that the Government of the United States has come to feel the necessity for such an international organization. For several years past, official American coöperation with the League has steadily increased. The situation has now developed to a point where the current formulæ for explaining the official attitude are to some extent misleading, and it may serve a useful purpose to trace the changes which have occurred since 1920, to survey the situation as it now exists, and to forecast some of the probabilities for the future.

Let us start with the fact that the United States has not ratified the Covenant of the League of Nations and has not accepted the place provided for her in the Assembly and the Council of the League. It is beside the present purpose to explain that fact, to attempt to say whether it is due to drift or to design, or to offer any argument for changing it. Whatever the seven millions of voters who constituted President Harding's majority in 1920 may have desired at that time, the Government of the United States has since interpreted their votes as a determination that the United States should not accept membership in the League, and it has proceeded on the theory that that issue is closed. But if this fact is to be taken as the starting-point, there still remains a question as to the account to be taken by the Government of the United States of other important facts, viz., that the League of Nations continues to exist, that more than fifty governments are vigorously pushing its work and effecting through it their coöperative action, and that much of the organized international life of our time is centered at Geneva. Pronouncements made in the

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United States some years ago that the League of Nations was dead were based on the assumption that the American election of 1920 could relieve us of the question for all time to come. Such pronouncements having proved to be false, the question which confronted the Government in 1921 still confronts it—with the League of Nations actually in existence, what is to be America's relation to it? The longer the League lives, the more insistent that question becomes.

At first the Department of State ignored the League of Nations. From March 4, 1921, to August 15 following, it did not reply to communications received from the Secretary-General of the League. In the summer of 1921 it even failed to forward—until the failure was exposed—invitations to the American members of the Permanent Court of Arbitration to nominate candidates for the Permanent Court of International Justice. That affront to a large body of American opinion was soon reversed, however, and a more courteous attitude of sending prompt but stereotyped and negative replies was adopted. This policy was continued by the Government for many months after unofficial American organizations, such as the Rockefeller Foundation, and many individual Americans had begun to coöperate wholeheartedly in the work of the League. Then, in course of time, as various matters in which our Government was interested were being dealt with at Geneva, the policy again changed. The formal disinterestedness was superseded by the appointment of official representatives to attend various League conferences. The appointments were always carefully safeguarded, however, and they were camouflaged with various formulæ tending to indicate that the official action of the United States was not official. For example, in 1923, Miss Grace Abbott, chief of the Childrens' Bureau, was named to attend a meeting of the League of Nations Committee on Traffic in Women and Children. Her appointment was designed to give satisfaction to those people who were pressing for coöperative action by our Government; but to satisfy the opponents of such action at the same time, Miss Abbott was sent to act "in an unofficial and consultative capacity." That formula served

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for some years as a bridge between Washington and Geneva. But the bridge was too frail for any heavy traffic, and it soon broke down. The election of 1924 paved the way to more confident action by our Government, and the year 1925 saw the American Government represented, as states members of the League of Nations were represented, at two important conferences held in Geneva—the Conference on Opium and the Arms Traffic Conference. This policy of regular representation at special conferences held under the auspices of the League of Nations has been continued since 1925. During 1927 the Government of the United States was represented at four important conferences called by the Council of the League of Nations—the Economic Conference, the Transit and Communications Conference, the Conference on Import and Export Prohibitions and Restrictions, and the Preparatory Disarmament Commission; and during 1928 the United States was represented at three important diplomatic conferences held under League auspices—a second Conference on Import and Export Prohibitions and Restrictions, a Conference on Double Taxation and Tax Evasion, and a Conference on Economic Statistics.

When this era of coöperation by the Government of the United States was begun, it was with an air of concealment, and Americans charged with particular missions found themselves compelled to gumshoe their way. But recently a change has occurred. The policy of coöperation is now being avowed by high officials, and perhaps the psychology of those who have some political independence has begun to be affected by the avowal. In a pamphlet widely distributed by the Republican national committee in 1928, Secretary Kellogg stated that "the Government of the United States has continued its policy of friendly and helpful coöperation with the League of Nations on subjects of international humanitarian concern;" and he spoke of the "willingness of the United States to cooperate freely, fully, and helpfully with the League in matters of genuine international concern." Mr. Ogden L. Mills, undersecretary of the Treasury, writing in *Foreign Affairs* (for June,

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1928) stated that "this Government has at all times pursued a policy of friendly coöperation with the League;" and he praised the attempt "which this country has made to be helpful in furthering any well-directed efforts toward better international conditions, whether such efforts have originated with the League or with any other agency."

Perhaps the change in four years is best indicated by the difference between the Republican platform in 1924 and the Republican platform in 1928. In 1924, it was sufficient for the Republican convention to declare: "The Republican party maintains the traditional American policy of non-interference in the political affairs of other nations. This Government has definitely refused membership in the League of Nations and to assume any obligations under the Covenant of the League. On this we stand." In 1928, although this language was repeated, the following was added: "In accordance, however, with the long-established American practice of giving aid and assistance to other peoples, we have most usefully assisted by coöperation in the humanitarian and technical work undertaken by the League, without involving ourselves in European politics by accepting membership." This declaration is generally significant for its effect on the partisan color which had previously been given to the question of American membership in the League of Nations. The assumption that the Democratic party favors the League of Nations and that the Republican party opposes it cannot long survive the failure of the Democratic party to mention the League in its platform of 1928 and the avowed willingness of the Republican party to continue "coöperation in the humanitarian and technical work undertaken by the League." Certainly an advance toward a more intelligent consideration of the subject will have been made when party division on the question disappears. The Republican leaders now seem to desire, however, to make capital out of the coöperation which has been begun, and their description of what has happened during the past four years has tended to create an impression that the United States is really launched upon a policy of complete coöperation with those phases of the

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work of the League of Nations which are generally referred to as "non-political." The facts will bear some examination to see just how far our coöperation has gone and how far the policy avowed is actually being carried out.

To appeal to a certain altruistic group, our Government's attitude is described in terms which would indicate that official American coöperation with the League of Nations is undertaken for the purpose of "helping" other peoples. The situation which existed immediately after the war lent itself to the insistence that America should "help" Europe, and unfortunately membership in the League was often advocated on that basis. The United States was more favorably situated than any European country; it was actively distributing relief in many parts of Europe; the problems of post-war reconstruction were so baffling that Europe was calling upon America to assist with money and materials. But that situation has long since passed. The degree of future American coöperation with other governments through such an organization as the League of Nations does not depend upon an American desire to help other countries. It depends rather on the American desire to help America. Other countries do not think of their membership in the League as "helping" their co-members. Nor did the Government of the United States use such language as that of the 1928 Republican platform when, at the second Conference on Import and Export Prohibitions and Restrictions, in July, 1928, its representative protested against French restrictions on the importation of cinema films. Those enthusiasts in the United States who have advocated the League mainly on a basis of rendering aid to other countries have done a disservice to the cause of international coöperation. A policy of helpfulness to others may be adopted for an emergency, but it cannot long serve as a basis of continuous action. To explain the American coöperation on any such ground is to give it an appearance of hypocritical unreality.

A more straightforward explanation was given by Secretary Hughes in an address to the New York Republican State Convention, on April 15, 1924: "There is no more difficulty in

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dealing with the organization of the League in this way for the purpose of protecting our interests or furthering our policies than there would be in dealing with the British Empire. Because several nations have formed an organization of which we are not a part is no reason why we cannot coöperate in all matters affecting our proper concern. We simply adjust our forms of contact and negotiation to the existing conditions. The matter of real importance is with respect to the subjects we take up. We do not take up subjects which involve political entanglements. We do not take up subjects which would draw us into matters not approved by American sentiment. When we do take up a subject, it is because this Government desires it to be taken up, and the same would be true under any form of action."

Apart from the purpose of American action, however, it would seem useful to inquire just what is the extent of American coöperation, and how far it may be true that "we have most usefully assisted by coöperation in the humanitarian and technical work undertaken by the League." Let us examine the way in which the United States has carried out what Secretary Kellogg has described as its "policy of friendly and helpful coöperation with the League of Nations on subjects of international concern."

II. EXTENT OF AMERICAN COÖPERATION

The outstanding activity of the League of Nations to be described as a "subject of international humanitarian concern" is its work in the field of public health. For more than a generation, it has been recognized that national public health work depends upon international coöperation. Since 1907, the United States has been a party to the treaty creating the International Public Health Office in Paris. The work of that office had not given general satisfaction, and when the League of Nations Health Committee was created in 1921, there was a general desire to transfer its functions to the new committee. This was opposed by the United States, and the opposition almost wrecked the plans for utilizing the League machinery in this

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field. At the Paris Conference in 1926 our representative insisted on continuing the old Office. At the same time, our surgeon-general, Dr. Hugh S. Cumming, paid high tribute to the work done at Geneva. Everywhere the League's record in this field is today acclaimed. The international interchanges of public health personnel, of which twenty-eight have been held since 1922, have made notable progress toward giving the world a single language of public health administration. The results of the League's epidemiological intelligence service have become indispensable to health officials of all countries. The conferences on standardization of sera have had a remarkable success. Yet in all of its work in this field, the League has had little official support from the United States. Surgeon-General Cumming sits as a member of the League's Health Committee, but he represents the Office at Paris and not the Government at Washington. Some twenty American public health officials have participated in the interchanges which have been arranged, and many individual Americans have coöperated in the health work in some capacity. The budget of the League's Health Committee during the past eight years has been in excess of two million dollars; and although about forty per cent of this has been contributed by the Rockefeller Foundation, no part of the expense has been borne by the United States. The people of the United States would doubtless be the last to be willing to see the health work of the League discontinued. Yet our Government has had little share in it to date, and when it has coöperated, its representatives have been circumscribed by the official aloofness prevailing in Washington.

A second activity to which Secretary Kellogg's formula will apply is the work of the League in connection with the traffic in opium and dangerous drugs. In 1912, and for several years before, the United States played a leading rôle in the efforts which led to the signing of an Opium Convention at The Hague. This provided for an exchange of information to be effected through the Dutch Government. American insistence in 1919 led to a provision in the Covenant for entrusting the League with general supervision over the execution of agreements with

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regard to the traffic in opium. In 1920, the Dutch Government asked all the signatories of the Hague Convention to agree to a transfer of its responsibility to the Secretariat of the League of Nations, and all of the signatories agreed except the United States. Even Germany agreed, though she was not then a member of the League. This anomalous position of the United States still continues, as was indicated recently when the Government of the United States reported to the Netherlands Government a seizure of drugs at Akron, Ohio, on March 29, 1928. These drugs were said to have been shipped from Italy, and their seizure raised an important international question. The Netherlands Government transmitted the American information to the League Secretariat, which reported it to other governments. Any other government would have avoided such circuitous action, and the consequent delay, by communicating the information directly to the Secretariat at Geneva.

The United States has been represented at various meetings of the League's Advisory Committee on the Traffic in Opium and other Dangerous Drugs, and our representatives there still act "unofficially." In February, 1928, the Secretary-General was informed that the United States was "desirous of continuing to coöperate with other nations" in this work, and that the American consul at Geneva would attend the meeting of the committee "unofficially." Of course the United States is not represented in the Council to which this committee reports. The United States was also represented at the conference in 1925 which drew up a new Opium Convention; but the American representatives there were adamant in their insistence on dealing, not with the various governments represented, but with all of them taken as an "entity" called the League, a method which broke down completely. As a consequence, the Opium Convention of February 19, 1925, has not been signed by the United States, though it has been signed or adhered to by not less than forty-four countries and has recently been brought into force among eighteen of them. This convention provides for the creation of a permanent central board to deal with various opium questions, the members of which are to be appointed by the

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Council and the United States; but our Government has refused to participate in making such appointments. To a limited extent, the United States has been "helpful" in this effort to control the traffic in opium, acting chiefly for its own self-protection; but it has by no means played a leading rôle. It has lagged behind opinion in other countries, and it has made the functioning of League machinery more difficult.

The suppression of the traffic in women and children is clearly a subject, also, which falls into Secretary Kellogg's category. In 1921, when the United States was invited to send representatives to a diplomatic conference called by the Council of the League to deal with this subject, our consul at Geneva called on the Secretary-General to say that the invitation was not to be accepted. Nor has our Government signed the treaty which that conference drew up, and which is now in force for more than thirty other countries. The Government of the United States has been represented at some of the meetings of the permanent committee dealing with the subject, but intermittently and by representatives acting only in an "unofficial" capacity. No part of the expense of this committee has been borne by the United States, nor of the documents which it has produced. In 1923 the Council decided to authorize a special investigation of the international traffic in women and girls, and the unofficial American Bureau of Social Hygiene financed the investigation. Great interest was manifested in the United States in the report which was presented, but no part of the moral or financial responsibility for it was borne by the Government of the United States.

Two other distinctly "humanitarian" efforts of the League have borne fruit in the treaty of September 12, 1923, concerning the suppression of the traffic in obscene publications, and the treaty of September 25, 1926, concerning the abolition of slavery. Both of these treaties deal with matters of clearly international interest, and both have been submitted to our Senate for consent to ratification. Yet we were represented only by an observer when the former treaty was drawn, and when the Slavery Convention was being drafted in 1925, our

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Government contented itself with informing the Secretary-General of the League that slavery had been abolished in the United States.

To turn from the activities which Secretary Kellogg describes as "humanitarian" to those which the Republican platform calls "technical," one of the great services rendered by the League has been its registration of international treaties and engagements and its publication of the texts in the League of Nations treaty series. Not only does this serve to protect all states against secret treaties, but it serves also to furnish the whole world with a convenient compendium of the world's treaty law, of which the need had been felt long before the war. The members of the League are under an obligation to register their treaties under Article 18 of the Covenant; but without any such obligation other states may avail themselves of the registry. Long before her membership in the League, Germany regularly registered her treaties, and Ecuador, which is not a member, has also done so. But the United States did not reply to the League's invitation of July 16, 1920, to register its treaties, and our treaties are usually registered by the other states with which they are made. Here is a place where the United States could be "helpful" in encouraging the abolition of secret engagements, and without any kind of involvement. But we have left this movement to be advanced by other countries. In eight years, more than 1,900 treaties and engagements have been registered with the Secretariat, and seventy-three volumes of the texts have been published. In 1925, the Department of State agreed to send to the Secretariat printed copies of United States treaties appearing in our own treaty series and stated that no objection would be offered to their publication in the League treaty series. Even this very limited action by the United States has been "helpful" to the people in all countries, including the United States, who must use the treaty series; for the Secretariat has established a new numbering of treaties in the treaty series for treaties published but not registered, and three treaties between the United States and Mexico, both non-members of the League, have thus

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been included in the series. But a real policy of coöperating "freely, fully, and helpfully," such as Secretary Kellogg announces, would certainly call for registration of its treaties and engagements by the United States, and no commitment would be involved if the Secretary of State should inaugurate the practice of communicating the texts for that purpose.

The economic work of the League of Nations is now taking on such importance that it cannot be ignored by the United States, and for two years the Government at Washington has given increasing attention to it. Our official participation in the Economic Conference in 1927 and in the two conferences of 1927 and 1928 on Import and Export Prohibitions and Restrictions is, perhaps, only a beginning. International conventions on various subjects are now being proposed which the United States cannot allow to be concluded without its collaboration. We have quite recently been represented at the Conference on Double Taxation and Tax Evasion and at the Conference on Economic Statistics. An important draft convention on the treatment of foreigners, drawn by the League's Economic Committee, has been communicated to governments for their opinions as to whether it would serve as the basis of the work of an international conference; if such a conference is held, of course the United States must be represented. But the Government of the United States has no part in controlling the work of the Economic Committee because it is not represented on the Council. Individual Americans are coöperating—Mr. Lucius R. Eastman on the Economic Committee, Mr. Jeremiah Smith on the Financial Committee, and Mr. Roland Boyden and Dr. Alonzo Taylor on the Economic Consultative Committee; but our Government has no voice in saying what will be initiated, nor in the preparations for diplomatic conferences to be held.

The work of the International Labor Organization of the League of Nations may be said to be both "humanitarian and technical." Eleven Labor Conferences have been held, from which a large body of labor legislation has emanated. Some of the twenty-six labor conventions have been generally ratified.

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Moreover, the International Labor Office has become in eight years an indispensable agency for the independent investigation of industrial problems of interest to a more general public than employers and workers. Yet in all this work no voice is raised on behalf of the Government of the United States. We have had no official representation at any of the annual conferences. Though many individual Americans have had a share in this work, our Government has not found one place where it could "help." If our policy is really one of "coöperating freely, fully, and helpfully" with the League, surely we should accept membership in the International Labor Organization with more than fifty other states—and a special article of its constitution limiting the responsibility of federal states would obviate any difficulty which might otherwise be raised because of our constitutional system. Our increasing dependence on foreign trade makes it of vital interest to us to overcome the competition of our own labor with that of countries of lower standards of living, and a selfish interest of the United States might be relied upon as the basis of our encouraging the approach to higher industrial levels abroad, even if we have no desire to "help" other countries in this field.

Codification of international law is another "technical" subject in which American leaders often proclaim an interest, and in 1928 the Republican party pledged itself to aid in promoting the "perfection of the principles of international law." Since 1924 the League of Nations has had a committee of experts at work endeavoring to say what subjects are ripe for codification. Mr. George W. Wickersham serves as a member of this committee, acting in his individual capacity. The Government of the United States has replied to the committee's questionnaires, but it enjoys no part in forming the final judgment based on the various replies. Hence, in 1927, when the Assembly took a decision to hold a conference to deal with the codification of three subjects, and when preparations for this conference were begun, the United States Government had no part in that decision and in such preparations. Yet our own interest will make it necessary for us to participate in the con-

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ference when it is held. The measures which have been taken to date have proved somewhat expensive, also, but our Government has not "helped" by bearing any part of the expense.

III. SHOULDERING THE FINANCIAL BURDEN

The coöperation which Secretary Kellogg acclaims presupposes that a League exists which other nations are supporting, in which we may coöperate. It presupposes not only that the initiative has been taken by other governments, but also that they are bearing the expense of maintaining a machinery with which the coöperation may be carried on. Our failure to contribute to that initiative is the serious shortcoming of these past eight years; but our position becomes clearer when our financial contribution is compared with that of other governments. Since 1920, Great Britain (exclusive of the British dominions, the Irish Free State, and India) has contributed about $3,500,000 to the expenses of the League of Nations, and her annual contribution at the present time is approximately $500,000. In these eight years the United States has contributed about $22,000 to the League of Nations. An analysis of the items may indicate the limited character of our participation. In 1923 we paid the League 350 Swiss francs (about $75) for our share of the expense of a staff borrowed from the League by the Commission of Jurists which met at The Hague under a resolution of the Washington Conference. In 1925 we paid the League about $2,000 for our share of the expense of the Opium Conference, and $2,700 for our share of the expense of the Arms Traffic Conference. In January, 1928, we paid the treasurer of the League about $5,400 toward the expenses of the Preparatory Commission for the Disarmament Conference, $600 toward the expenses of the 1927 Conference on Communications and Transit, $10,000 toward the expenses of the Economic Conference, and $350 toward the expenses of the Conference on Import and Export Prohibitions and Restrictions; and at the time the Department of State announced that "the American contribution is the same as the British, which is the largest sum hitherto paid by any country."

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These are all of America's payments to the date of this writing. Each of these items represents expenditure for a special activity of the League. But for the general expense of keeping such an organization going, so that we may coöperate in what other nations decide to undertake—for headquarters at Geneva, for salaries of permanent officials, for the printing of documents and the expense of communication with governments—we pay nothing.

IV. WHAT COÖPERATION MIGHT MEAN

The present situation, then, would seem to be this: more than fifty other peoples are maintaining an organization for international coöperation with reference to a variety of subjects, and the United States joins in such coöperation, to a very limited extent, after it has been put under way. Numerous multilateral conventions have resulted from it, constituting for most of the world a new body of international law. None of these conventions has been ratified by the United States, though four of them have been submitted to our Senate and three others have recently been signed by our representatives. In the use of the quasi-administrative machinery which exists, the United States either acts "unofficially" or in most instances not at all. And from such permanent coöperative undertakings as the registration of treaties we still abstain.

Now this situation may continue. It is certain to do so as long as the most extreme opinion expressed on Capitol Hill is taken as the measure of American policy at the other end of Pennsylvania Avenue. But it has a distinct danger for the United States. It frequently subjects us in our coöperation to decisions which are taken without our participation. Representatives of other Powers decide what is to be undertaken; they determine what conferences are to be held and what subjects each is to consider; and they are in complete charge of the preparations for conferences in advance. We have none of the initiative, we do not have a part in shaping the agenda, and our representatives arrive at a League conference to find a chairman already chosen by the Council of the League and preparations advanced to a great extent by League committees

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over which our Government has no control. And yet we must take part in the conferences, for the simple reason that our own interests demand our representation when certain subjects of international importance are under consideration. In a sense, our coöperation with the League is not of our own choosing. We simply cannot afford to sit out when fifty other governments are sitting in. A part of the American public may continue to believe that we wish to be "helpful," but the Government must see that we are safe.

It would seem that a policy of "free, full, and helpful coöperation" in the League should mean a very different rôle for the United States. When the United States has a secretary of state who is not dominated by a small minority in the Senate, he will find a very different course to follow in translating that formula into fact. He will first of all announce, without any pretense of "helping" other peoples, that we propose to join openly with other governments in dealing through the League of Nations with those problems which in a shrinking world are common to all peoples. He will seek for the United States, with or without any formal action on the Covenant, a voice in the different organs of the League and in its permanent committees. He will from time to time propose that certain subjects be dealt with by the use of the Geneva machinery. He will, of course, see that the United States pays a fair share of the expenses, both the special and the running expenses of current international coöperation. He will train a staff in the Department of State to represent us in the work of the League. He will see that the American public has available to it the excellent documentation which is now being produced at Geneva. In short, he will abandon our present policy of following where fifty other governments point the way, and he will recover for America a share in the leadership in international coöperative action. When that time comes—and it seems probable that it will come—it will not be necessary for the American people to be cajoled with any thought of their righteousness in "helping" others. We can then discuss the problems of international coöperation on the basis of our conceptions of the interests of the United States as a part of the whole community of nations.

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ADMINISTRATIVE LAW AND THE CONSTITUTION

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In the constitution of Massachusetts is found the following: "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; the judicial shall never exercise the legislative and executive powers or either of them; to the end it may be a government of laws and not of men." This is probably the most explicit statement of the doctrine of separation of powers to be found in the constitution of any of the states of this Union. While the doctrine has been set forth in other constitutions in other language, the constitutions of all the states as construed and interpreted have come to have substantially the same meaning. For more than a century, lawyers, courts, political scientists, publicists, and the people generally regarded the separation of the government into coördinate departments as one of the corner-stones of our liberties.

Montesquieu, who had no doubt derived his ideas upon the subject from the writings of Locke and a study of English law, in 1748 published his great work, *The Spirit of Laws*. In this treatise he gave a new exposition of the doctrine of separation of powers and the reasons for it, in a form which gave it wide currency in the English-speaking world; but this exposition was intended by Montesquieu to be a statement of political theory, and was so accepted by political writers of the time. Because of its wide currency, it profoundly influenced political thought during the years immediately preceding the adoption of the Constitution of the United States. While the Constitution of the United States contains no declaration upon the subject, nevertheless it was framed with due regard to the

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doctrine of the separation of powers. By it the legislative power is vested in Congress, the executive power is vested in the President of the United States, and the judicial power is vested in one Supreme Court "and in such inferior courts as Congress may from time to time ordain and establish." It was early held that, the separate powers being vested in separate departments by the Constitution itself, one power could not be vested in representatives of another department by act of Congress; so that in legal effect the method adopted in the formation of the Constitution of the United States was equivalent to the explicit declaration of the constitution of the state of Massachusetts.

The doctrine that the primary powers of government cannot be redelegated has had a long and interesting development in American law. At an early time it was recognized that in practice a complete separation of powers was not possible, and it soon became apparent that no satisfactory definition of executive, legislative, or judicial power could be made. While jurists have had a fairly clear conception of what was meant by these terms, and while they can be defined for some purposes, all attempts to make a comprehensive, all-inclusive, accurate definition have failed. As a matter of fact, the powers have never in actual practice been scientifically or completely separated. They are overlapping, and of necessity must be so. An executive officer must, in the performance of his statutory duties, construe and apply the law. When courts reach out and by means of a receiver operate a great system of railways, they are discharging administrative and executive duties which have historically found their way into the judicial department. Most constitutions reserve to legislatures in express terms the right to exercise certain kinds of judicial power.

While the doctrine of separation of powers and its corollary that a power once vested may not be redelegated have engaged the attention of jurists and publicists from the beginning, the whole matter was given a new significance and a vastly increased importance with the advent and development of administrative law.

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The rapid growth and development of administrative agencies during the last half-century, in this country as well as in England, have brought profound changes in the political and legal structure and a recasting of political and legal theory in both countries. Writing about 1885, A. V. Dicey said that the words "administrative law" were "unknown to English judges and counsel, and are in themselves hardly intelligible without further explanation." Thirty years, however, worked a complete change in Mr. Dicey's notions of administrative law. Writing in 1915, he said: "The objection to bestowing upon the Government of the day, or upon the servants of the Crown who come within the control or the influence of the Cabinet, functions which in their nature belong to the law courts, is obvious. Such transference of authority saps the foundation of that rule of law which has been for generations a leading feature of the English Constitution. But we must remember that when the State undertakes the management of business properly so-called, and business which hitherto has been carried on by each individual citizen simply with a view to his own interest, the Government, or, in the language of English law, the servants of the Crown, will be found to need that freedom of action necessarily possessed by every private person in the management of his own personal concerns."

The Arlidge case (1915) marks a turning point in the history of English law. In that case it was held that judicial power could be delegated to an administrative body; that the power so delegated might be exercised in accordance with rules made by the administrative body and need not be exercised according to the course of the common law.

In England and in France, the doctrine of the separation of powers has remained a matter of political theory. In this country, by reason of our formal written constitutions, it has become a rule of law. If the doctrine is to be applied without limitation or restraint, and all powers of government are embraced in the three coördinate departments and no power so delegated can be redelegated or two or more powers be combined, it is quite apparent that our institutions can develop

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only in certain parallel lanes. In this country, the attempt to create subordinate administrative tribunals was for a long time hampered and partially frustrated because no authority of practical consequence could be conferred upon a tribunal which did not, in varying degrees, combine the executive, legislative, and judicial powers or two of them. Because of the difficulty of defining and setting limits to these powers, the question of whether or not an act creating an administrative agency amounted to an unconstitutional delegation of power always remained doubtful until the question was passed upon by a court of last resort.

Administrative tribunals, often spoken of as bureaus, boards, or commissions, did not come because any one wanted them to come. They came because there seemed to be no other practical way of carrying on the affairs of government and discharging the duties and obligations which an increasingly complex social organization made it necessary for the government to perform. Under our system of law there was no place in constitutional theory for the development of these subordinate tribunals. Because of overpowering necessity, they were finally admitted into the legal system in various disguises. It was held that power to make rules and regulations, although such rules and regulations have the force and effect of law, was not, within certain limitations, an unconstitutional delegation of legislative power. On the ground that an administrative tribunal might be required to find certain facts existing in theory, the delegation of what amounts to a combination of legislative and judicial power was conferred upon these tribunals, and such delegation of power has been repeatedly sustained.

The executive committee of the constitutional convention of 1921, in a report to the legislature of the state of New York, said: "The tendency to extend the activities of the state has been world-wide, for manifestations of it are observable in every country, whatever the form of government may be. The Great War has markedly, if not portentously, accelerated this tendency. In the United States, there are everywhere being developed at enormous cost in the most intensive fashion a multi-

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tudinous bureaucracy with autocratic powers and arbitrary discretion, and a vast system of complicated and often conflicting administrative jurisdictions in relation to property and businesses and personal conduct, which reach and affect almost every individual, and most of which, only a few years ago, would have been regarded as of strictly private concern and not to be tolerated by a free people."

It is a matter of common knowledge that the development of administrative tribunals has been opposed at every point, with varying success. It is also true that those who have opposed the creation and extension of administrative tribunals have as a rule had the best of the argument on legal and constitutional grounds, but have been obliged to yield to an irresistible social pressure. If the advent and growth of administrative law in our legal system is inevitable, it is manifest that time and energy spent to prevent it is time and energy wasted. In the end a much better result would be attained if the inevitability of the process were frankly recognized and an intelligent effort made to direct and wisely circumscribe the development of this branch of our law. An attempt to fit administrative law into our legal system without recognizing that there is no place for it if the doctrine of the separation of powers is to be applied as it was understood in the early nineteenth century is an attempt to attain the unattainable. The friends and the foes of administrative law agree that it is here, that it is here to stay, and that it is necessary to the proper functioning of government. Would it not be wiser to recognize this fact, to give it a place in our legal system, to acknowledge unequivocally its real nature, and to avail ourselves of the experience of those jurisdictions in which it has had its greatest development, to the end that it may not become, as many well informed lawyers and publicists believe that it will become, a source of tyranny and oppression?

In admitting administrative law into our constitutional system we have indulged in a certain amount of formula worship which is of doubtful value. Why say that the power exercised by a board or commission is quasi-judicial and not judicial,

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when the only difference between what is admittedly the exercise of judicial power and the exercise of so-called quasi-judicial power is the subject matter with which the power deals? If a workman's compensation board holds after investigation, with or without a hearing, that an employer has violated a safety place statute, and that as a consequence the employer shall pay to the injured employee fifteen per cent more than the normal compensation because of such violation, how are we to distinguish between the power so exercised and the power that the court exercises when, upon the same state of facts, the employer being properly before it, the court finds the employer guilty under the statute and adjudges him to pay a fine of one hundred dollars? There are cases which attempt to point out a distinction, but the distinctions pointed out are unreal and in many instances fanciful.

It is conceded that a reasonable rate for a service rendered to the public, so far as the power of the court to deal with it is concerned, is one not so high, on the one hand, as to be oppressive or extortionate for the service rendered, or so low, on the other hand, as to deprive the one who furnishes it of just compensation. A utility commission may choose any rate which lies within this zone, and its determination may not be disturbed by a court. It is idle to say that there is but one just and reasonable rate, and that it is the duty of the commission to discover that one as a fact, when the commission as a matter of discretion chooses the rate which will best serve the interests of the public. The zone within which the commission may make its choice of a rate is of the same extent as the zone within which the legislature may select a rate by direct enactment for the same reasons. Nothing is gained by saying that one is the exercise of legislative power and the other the exercise of a power to determine a fact or make a rule. The sovereign authority speaks with the same legal consequences in each case. In his address to the American Bar Association in 1916, Mr. Elihu Root said: "Before these [administrative] agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight."

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Why should legislatures and courts in dealing with administrative law be hampered because they are obliged to start their consideration with an unsound premise?

At the present time, legislatures are in doubt as to what they may and may not do without violating the constitution. Because of this doubt, they oftentimes pursue a policy of evasion in an attempt to avoid limitations, real or supposed. It being conceded that the doctrine of the separation and delegation of powers is applicable only to a limited extent, should not the courts, as a matter of sound judicial policy, deduce from the statutes and cases the limits within which the powers may be delegated and combined? No one would claim that the power to adjudicate controversies relating to common law rights should or could be delegated to a commission. But the power to determine rights created by a statute may well fall in a different class. If the controversies in legislatures related more to that which should be done in the public interest rather than what it is possible to do in the face of constitutional limitations, a better result would be obtained. If legislatures realized that the rights of citizens depended upon the legislative restraints placed upon the exercise of delegated power rather than the constitutional restraints upon the exercise of the three coordinate powers, they would hesitate to endow their creations with undefined and illimitable powers. An attempt by a legislature to prescribe methods of procedure for administrative tribunals often results in a measure being declared unconstitutional, whereas a power granted in the broadest and most general terms is frequently sustained because no method of exercising the power is prescribed. There would be less of legislative experimentation with constitutional power if legislatures realized more definitely their responsibility in the premises. The frequency with which laws are declared unconstitutional has created a feeling in the public, as well as in the legislative, mind that the courts, or if not the courts then the constitution, is chargeable with the responsibility for bad laws. One of the undesirable results of the constitutional, as opposed to the parliamentary, system is that it engenders

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in our lawmakers a feeling that they are not directly responsible for the consequences of a law if the law is constitutional. In the public mind the responsibility for bad law is placed upon the courts. The public feels that if a law were bad the courts would have declared it unconstitutional. Courts, in fact, have no concern with the policies of laws as such, and can hold a law invalid only when it offends a particular constitutional provision.

For these and many other reasons, why should we not, as rapidly as is possible and consistent with precedent, move to a sounder position in regard to administrative law?

If we acknowledge in legal theory what exists in fact in the development of administrative law in our legal system, there will still remain many problems to be solved. The character of these problems is such that there should be brought to their solution the wisest and ablest men to be found in the legal profession, as well as the ablest publicists and political scientists. We need not be much impressed by the fears and forebodings of those to whom all change is anathema. There exists, however, a great body of opinion entertained by those who are entitled to our respect and in whose judgment we have confidence, that the consequences foreseen by Montesquieu will ensue if some limit is not set to the creation of administrative agencies with powers so broad as to make them at once legislatures and courts. We have today administrative agencies regulating public utility corporations, business affected with a public interest, professions, trades and callings, rates and prices; laws for the protection of the public health and safety and the promotion of public convenience and advantage; examining boards and other bodies to pass on the competency, responsibility, or other qualifications of private schools, chauffeurs, engineers, surveyors, private detectives, real estate brokers, stockbrokers, teachers, chiropodists, nurses, public accountants, shorthand reporters, physicians and surgeons, midwives, peddlers, lawyers, dentists, pharmacists, plumbers, undertakers, embalmers, veterinarians, optometrists, architects, beauty parlor operators, employees of the state and its civil divisions, and other professions, trades, and callings; also boards and commissioners of educa-

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tion, public service commissions, probation commissions, parole boards, athletic commissions to regulate boxing and wrestling contests, racing commissions, bank examiners, insurance departments, transit commissions, health boards (with divisions for the safeguarding of motherhood, saving of infant life, and instruction in child hygiene), child welfare boards, tax commissions, tenement house commissions, building commissions, water power commissions, water control commissions, commissions for the blind and for mental defectives, recreation commissions, boards of charities, agricultural commissions, conservation commissions, workmen's compensation and industrial commissions, boards of child welfare for the granting of mothers' pensions, motion picture commissions; and in the United States the Interstate Commerce Commission, the Federal Trade Commission, the Railroad Labor Board, the various officers which supervise and regulate internal revenue, and many other persons and groups exercising a vast power that is granted in the most general and unrestrained terms. It is quite apparent that the law does not propose to be left behind in the urge for complexity which seems to be so characteristic of our age.

In the very nature of things, it was inevitable that an expanding body of law which had no recognized place in our legal system should at some point or points come in contact with the established legal order and oppose itself to established practice. The doctrine of the non-delegation of governmental power had sufficient force and vitality to set limits for a time to the process of development; and while it is true that there yet remain some kinds of legislative power which may not be delegated, some kinds of judicial power which may not be delegated, and while it is still held that there cannot be a cross-delegation of powers so as to work a combination of them in a single individual or group, these ideas have lost their vitality, and in many instances are frankly ignored.

Let us consider some of the points of impact of administrative law upon our constitutional system. The point where the irresistible force of growing administrative law most directly

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collides with the immovable body of law is as to the right of a party to have a review of a determination made by an administrative tribunal. In the estimation of English-speaking people generally, a right of review is no less sacred than the right to be heard in the first instance. Historically, a review was given as a matter of privilege and not of right. The cases in which a review would be granted were determined by the reviewing body. The practice of this group grew into a rule and the rule into a law. The constitution of the state of Wisconsin provides that "writs of error [the right to a review] shall never be prohibited by law." In the earlier laws creating administrative boards and commissions, great care was exercised to provide for a right of review, but the tendency has been in recent years to limit the right in one way or another. In general, the method employed has been to prescribe that the findings of fact made by the administrative tribunal shall be conclusive upon the reviewing body. Manifestly, such a provision as this (and such provisions are not uncommon) makes it possible for a commission to base an award upon findings so opposed to the actual facts in the case that one's natural sense of justice revolts. Nevertheless, the person against whom the award is made is without legal remedy.

As might be expected in so important a matter, there is a sharp conflict of opinion. At one extreme are those who believe that the determination of administrative bodies should be subject to no review by the courts, thus placing them in the class of courts which administer the *droit administratif* of France. At the other extreme are those of the common law school who believe that every determination should be subject to a full court review. Manifestly, the determination of the extent to which a review should be had involves questions of public policy of the greatest importance. Should the public mind ever become imbued with the idea that administrative agencies are tyrannical, oppressive, and beyond the reach of the law courts, the whole system might conceivably be overthrown. On the other hand, if the views of the extreme common law school should prevail, the effectiveness of administrative agencies

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might be destroyed and their functions paralyzed. One of the most persuasive arguments against a too generous employment of the right to a judicial review is the fact that courts are not equipped to review findings of fact in many technical fields. A judge, in order to be properly equipped to make an intelligent review of findings of valuation of a public utility, in addition to being a lawyer, should be an expert accountant, an engineer, an experienced operator, and a financier. An admission that he is not thus equipped may be made by any judge without a blush of shame. On the other hand, an unintelligent, improperly equipped administrative body, ignorant of fundamental legal principles, may by its findings and orders do such great injustice that one who suffers therefrom ought, according to the conceptions of justice which obtain among Anglo-American peoples, to be entitled to have them reviewed. Here we come to an impasse in the development of administrative law under our constitutional system, especially in the major fields such as regulation of public utilities, sale of securities, and workman's compensation acts.

The case for making final the determination of administrative tribunals has been stated as follows: "The effectiveness of the orders of the commission . . . . is largely determined by the conclusiveness of its findings. For the commission to be most efficient and of the greatest practical value, its orders and regulations, issued after due investigation, must become and remain effective with the final disposition of the commission. The necessary delays attending review by the courts and their lack of time and opportunity for investigating situations at first hand and as a current operating concern, constitute at once the occasion and the chief reason for commission control."

The view of business upon this proposition has been stated thus: "The main principle on which the government of the United States rests is that it should be a government of laws and not of men; that no one should have his life, liberty, or property taken without the right to appeal to the courts to determine if the taking is just. The doctrine that regulating commissions or other administrative bodies should be given an

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arbitrary power over public utilities is simply the doctrine that the property rights of the owners of public utilities should not be given the same protection as the property rights of other persons."

There can be no reasonable doubt that by the creation of administrative agencies, and by granting to these agencies combined powers to be exercised in a particular case in the discretion of the agent, whether the agent be a single person or a group, we are on our way back to that condition of affairs which existed prior to the promulgation of the doctrine of separation of powers and its incorporation by statute and decision into the body of Anglo-American law. It has been our proudest boast that ours is a government of laws and not of men. While it is true that in Anglo-American law there has been vested in judicial officers a large discretion, that discretion has not been an arbitrary one, and it has not in fact, except in rare instances, been exercised in a capricious and arbitrary way. The regard of judges (who are men trained in the law) for fundamental principles, combined with the force of public opinion, has operated as a sufficient restraint upon the exercise of that power. The slightest departure on the part of the courts from a standard which the public thinks they should observe produces a wave of popular feeling which is indicative of the jealousy with which people look upon the exercise of discretion, even by courts. Witness the discussion in the public press, informed and uninformed, with reference to the exercise by courts of the undoubted power which they have to punish for contempt.

That the development of administrative law must stop short of combining in one person or group legislative, executive, and judicial power which may be exercised arbitrarily, without preserving to a party claiming to be deprived of his life, liberty, or property, a right of review, appears axiomatic. It seems probable that the matter will be worked out ultimately by way of constitutional amendment, permitting the creation of a court comparable to the French Council of State, in order that highly technical and complex questions involved in administrative

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law may be reviewed by a competent tribunal. As long as the Fifth and Fourteenth Amendments stand, guaranteeing to every citizen due process of law in matters relating to personal liberty or property, no substitute for procedure according to the course of the common law can be brought into play that does not amount to due process as it has been defined by the decisions of the United States Supreme Court.

As has been pointed out repeatedly, the development of administrative law in the Anglo-American system is of comparatively recent date. It has met with a hostile reception at the hands of common law lawyers who are schooled in the fundamentals of the doctrine of separation of powers. Those desiring to enlarge the field of administrative law have been in many instances those who sought through such an intermediary to impose their economic ideas upon the state by giving them the force of law through the determination of administrative tribunals. Many legal controversies which are carried on in the language of the law really arise over differences in economic theory, and are more economic than legal in substance. There seems to be a double danger in combining the powers in a single administrative agency: first, the danger from such a combination pointed out by Montesquieu; and second, the danger that such a combination might be made a vantage ground from which a determined minority could impose its economic and managerial theories upon business organizations. That the problems presented are of great magnitude and importance cannot be doubted. One who attempts to prophesy in this field is certainly not lacking in courage, not to say rashness. From past developments, it is safe to say that for the immediate future a right of review of the determination made by administrative tribunals will be preserved.

The second major contact of the administrative and common law systems arises out of the delegation of legislative power to administrative agencies. There has grown up a practice, and within recent years there has been a rapid expansion of it, in the direction of granting administrative agencies general authority in a specific field and authorizing the agency to carry

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the legislative mandate into effect and for that purpose to adopt necessary rules and regulations. These rules and regulations, when adopted, have the force and effect of law, and penalties may be imposed by the courts or by administrative agencies for their infraction. There is in the exercise of such powers a natural tendency to run to arbitrary determination, because it is the easiest and simplest way to administer the law. No doubt administrative agencies can be kept within the field of their jurisdiction by the courts, because if they act in excess of their jurisdiction their acts are void. There is bound to be an overlapping, a zone in which it is difficult to say whether the power exercised is legislative in character or whether it is merely in the nature of a rule-making power to carry out a declared legislative policy. Those who are most disquieted by the growth of administrative law need have no fear that citizens who are deprived of their liberty or property by means of the *ultra vires* acts of administrative agencies will be without legal remedy. As a matter of fact, the practice of administrative agencies tends to crystallize into a body of rules, observance of which tends to curb arbitrary power. Abuses are quite promptly and readily corrected by legislative action, and in clear cases *ultra vires* acts will be restrained by the courts. The difficulty is quite likely to be that administrative agencies will become too formalistic, be given too little discretion, and develop a body of rules which will be as inelastic as statute law itself. It is easier to adhere to a rule once made than to make a new one, and in the great mass of work which is piled upon these agencies it is but natural for them to follow the line of least resistance.

Finally, it is quite apparent that the future development of administrative law in the Anglo-American legal system is dependent very largely upon the personnel which wields the power in the beginning. Naturally (but quite unfortunately) the major positions often become political plums and are awarded for strategic political purposes without regard to the previous training or fitness of the incumbent. It should be said that men so selected, who are permitted to remain in office, often grow and develop into skillful administrators whose

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dominant purpose is to exercise the powers of their office so as to bring credit to themselves as well as to the office. There is and always will be this safeguard, that back of the administrative agent who may himself to some extent be subject to the changing political fortunes of contending groups stands a highly trained, highly efficient, group of experts protected by the civil service law; and upon this group of experts depends mainly the details of administration.

The development of administrative law is working a profound and fundamental change in our institutions. Laws are no longer made solely by the legislature. Laws are no longer interpreted and applied solely by the courts. As a consequence, there have been created extra-constitutional agencies exercising powers vested by the constitution in the legislature and the courts. In many respects, particularly as to procedure, these newly created agencies are not subject to constitutional limitations. There has resulted a division of responsibility, and in many cases a contest for power, between agencies, and attempts have been made to gain control of these agencies for ulterior purposes. The revolutionary character and the far-reaching importance of the changes which administrative law is working in our governmental system present legal and political problems of the first rank, the solution of which may well engage the attention of the ablest lawyers, publicists, and statesmen.

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CAMPAIGN EXPENDITURES

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I start with an assumption. It is an assumption which can be supported by impressive evidence, and which political experts, familiar with that evidence, will be disposed to admit: campaign expenditures, in many parts of this country, tend to be not only excessive but also corrupt.

This corruption is particularly noxious because it affects the very foundations of the democratic process. Therefore, when once its existence has been recognized, the application of a remedy becomes imperative. Only one question can arise: What is the appropriate remedy?

Twenty years ago Mr. Perry Belmont was prescribing publicity. His pharmacopoeia resembled, in its simplicity, that of the late Sir William Osler, which was confined to nux vomica and hope. According to his belief—and it is shared by many today—the best method of treatment is to tell the patient what is wrong with him and let him cure himself. In a word, if the law requires publicity for the details of campaign contributions and expenditures, an informed public opinion, becoming aware of unhealthy conditions, can be relied upon to correct them.

Experience makes it plain that this prescription contains too much hope and not enough nux vomica. Public interest in campaign expenditures and the abuses connected with them is spasmodic. It can be roused from its chronic torpor only by the shock of some particularly scandalous or dramatic revelation. The shock comes at frequent intervals. In an Ohio county twenty-five per cent of the voters are actually convicted of selling their votes; Governor Sulzer of New York is impeached, Senator Newberry of Michigan brought to trial; a Senate committee scrutinizes rather closely the spending of vast sums by two leading aspirants to the Republican presi-

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dential nomination. Then, for the moment, there is loud condemnation, a parade of exasperated virtue, and perhaps also some dim perception of a problem that touches closely a vital spot in popular government. At least, the righteous—or self-righteous—minority reacts in this fashion. The others, after making a few appropriate gestures for the sake of propriety, subside into cynical indifference.

Two years ago the Republican primaries in Pennsylvania and Illinois precipitated one of these periodic public spasms. The scandal, so far as the Reed committee disclosed it, went beyond mere implications from the size of the campaign funds. These funds were enormous, it is true; in Pennsylvania the Vare-Beidleman faction spent $786,000, the Pepper-Fisher faction $1,800,000. But the ways in which the money was raised and spent constituted the real offense. Aside from the largesses of Mr. Samuel Insull and Mr. Joseph R. Grundy, there were mysterious cash transactions—gifts of $25,000 and $50,000 which the donors, being men in somewhat modest circumstances, seemed unwilling or unable to explain; and the dense fog of disguise and evasion that enveloped these transactions gave them a sinister aspect. Likewise, some of the expenditures, though ostensibly innocent, bore certain familiar marks of gross corruption. Governor Pinchot said of the senatorial nomination in Pennsylvania that it was "partly bought and partly stolen." If it was stolen, we must suppose that the hired watchers did little to earn their pay. There were many watchers. In Allegheny county, according to testimony before the committee, the Vare and Pepper factions employed some fifty thousand of them at an estimated cost of half a million dollars; and in that county more than one-third of all the votes received by Vare and Pepper were cast by their ten-dollar watchers. It may be significant that Vare, with only ten watchers to a precinct, was outvoted by Pepper, who had twenty-five.

Now the facts had become notorious well in advance of the November election. The people of Illinois and Pennsylvania were sufficiently informed. They had an opportunity to express their resentment and administer a stinging rebuke. They chose

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instead, by accepting Mr. Smith and Mr. Vare, to acquiesce in the vicious methods by which the nominations had been procured. They condoned flagrant corruption; and what happened in that case may be taken as fairly typical of the popular attitude. "However depressing the fact may be to those who have faith in 'the fundamental intelligence and right-mindedness of the American people,' " Mr. Frank R. Kent observes,[1] "every machine politician with precinct experience knows that that faith is without foundation, and that in the matter of corruption—except under certain narrow conditions—the people are complacent rather than resentful."

Publicity, then, is not enough. Its inadequacy has been revealed over and over again. This being so, can we find a better prospect in the alternative of legal restraint—of law so framed that it will set up right standards of conduct and provide effective means of enforcing them? This alternative does not imply the abandonment of publicity, which, indeed, the law will do everything to secure. It simply accepts the condition of a rather irresponsible patient, prescribes his diet, and, while hoping that he will have the good sense to obey, gets ready a dose of bitter medicine as an antidote to over-indulgence.

But the principle of statutory restraint upon expenditures does not escape criticism. When applied under the conditions that actually exist, it involves an apparent fallacy. Does not law derive its sanction from the public opinion behind it? How, then, can you justify recourse to legislation in a case where popular apathy has been demonstrated? How can you hope to enforce moral standards that do not already exist in the conscience of the community? Such questions must be answered. As a matter of fact, the answer is not hard to find. These higher moral standards are already accepted, if not by the community as a whole, at least by an influential minority. Corruption does not pass unchallenged; the disclosures of the Reed committee cost Mr. Vare and Mr. Smith hundreds of thousands of votes. Behind the law, using it as a rallying-point and weapon,

[1] *American Mercury*, vol. XIV (1928), p. 130.

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a formidable body of opinion will gather at once. Against the law no active hostility, no open and organized resistance will be directed; for it would be difficult to mobilize any widespread enthusiasm or moral fervor in defense of the inalienable right of corrupting and being corrupted, the fundamental liberty of debauching the electorate.

This theoretical argument may not satisfy the critics. There is a concrete situation that must be faced. We must deal, they say, not with the probable effect of corrupt-practice legislation, but with its actual effect; we must take into account the statutes, state and federal, that, growing steadily in volume through the past generation, have tested the value of a legislative remedy. How effective have the statutes been? This is a vital point. It brings the whole problem into focus. The positive reactions that the experiments show, as the results in forty-five states are tabulated, ought to establish definite conclusions. Unfortunately, the results have not been brought together in any serviceable form. Difficulties stand in the way: the investigator—supposing he has had the time and patience to examine the scattered and complex evidence—finds that there has been no uniformity of conditions in the laboratory tests, that various chemical agents have been employed at varying strengths, and that he is baffled in his analysis by encountering so many strange and imponderable factors. Thus, not only is the New York law quite different from the Oregon law, but the political conditions which each law is designed to meet are also quite different; and the success or failure of each law in correcting manifest abuses—a question of fact that is not easy to determine—may depend far less upon the nature of the remedy than upon the means provided for its application.

The scientific data that we require for purposes of generalization are not available. We are floundering in a morass of ignorance or of casual, incomplete, unreliable, and misleading information. Lord Palmerston said that only three men had been able to penetrate the labyrinth of the Schleswig-Holstein question: the Prince Consort, who wrote interminable memoranda about it; a German professor, who had been driven

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mad by it; and he himself, who had eventually forgotten all about it. Nobody has penetrated the labyrinth of our corrupt-practice legislation. At least I have not yet come across any mad professor or any interminable memoranda. The approaches to the labyrinth, it is true, have been charted. Professor Pollock in his *Party Campaign Funds*, Professor Sikes in his *State and Federal Corrupt Practice Legislation*, and Miss Rocca in her *Corrupt Practices Legislation*, which the National League of Women Voters has lately published, have done pioneering work of enormous value. But their contribution, however notable it may be, serves to emphasize the need of an inquiry still more detailed, still more systematic in method and extensive in scope.

The existing body of law must be subjected to a careful analysis. I can indicate here only the broad lines of procedure. First, certain principles that have been established, in the course of a preliminary survey, as characteristic of the more complete or more advanced legislation should be formulated as a norm, and then each separate statute classified on the basis of its approximation to that norm or divergence from it. In the meantime, questions may arise respecting the origin of the statute. Why did the statute assume this particular form? Did the legislature act intelligently on the basis of local experience or the experience of a neighboring state where similar conditions prevailed, or was it guided by theoretical assumptions or by some dubious political motive—the desire, say, to placate the people without conferring any material benefits? Considerations like these are important. When, for instance, four or five statutes show a singular family resemblance, we must trace the blood-lines and construct a genealogical table; we must make it plain that the dominant characteristics of Minnesota, Utah, and some other states have been honorably transmitted from Wisconsin, or that here and there some striking feature of the Oregon physiognomy has been reproduced. But when the statutes have been analyzed and classified, when the historical antecedents have been probed, the accomplishment of our task has merely begun. The way is now open to the really difficult part of the undertaking.

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It is absolutely essential to find what each statute means in terms of its practical operation. Here, at last, is the labyrinth! No one yet has been intrepid enough to venture along its intricate and tortuous paths; and at this point the inquiry is likely to falter. There are so many aspects to be considered; there is so little evidence of an obvious or tangible sort. We have the court decisions, of course. But what of the hidden yet vital facts that only the seasoned politician knows and that he will not divulge in response to a naive questionnaire? The possible complications are apparent. In the case of any single statute, then, quite an elaborate investigation would be needed; and the burden involved in a comprehensive nation-wide study would seem to make coöperative rather than individual enterprise appropriate. The American Political Science Associationcan command the resources that are needed for such an undertaking. I should like to see a committee, under its auspices, draw up a detailed plan and select the field workers—preferably men of legal training and political experience whose familiarity with local conditions would equip them to thread their way through limited areas of the labyrinth. Year by year, at our round-table conferences, phases and stages of the investigation could be discussed, with the idea of exposing any defect in method and of ensuring scientific thoroughness in the field work.

The time is ripe for action. In this subject of campaign expenditures there exists just now a certain amount of popular interest that can readily be capitalized. The need of action is demonstrable. It requires no close observation to establish the lack of any reasoned opinion in this country as to either the proper objects of corrupt-practice legislation or the specific means of achieving them. There is no reasoned opinion because there are no settled facts upon which to base it.

In drawing up its plan for a nation-wide investigation the committee—my hypothetical committee—should look beyond American experience. British experience illuminates our own. It would be absurd to ignore the Corrupt and Illegal Practices Prevention Act of 1883, which—building upon earlier statutes, removing their positive defects, supplying their deficiencies—

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brought about a marked improvement in British political behavior and directly inspired a good deal of our American legislation. That act can be studied from the standpoint of the court decisions in a number of fairly exhaustive legal treatises; and from the standpoint of party politics in such works as Houston and Valdar's *Modern Electioneering Practice* and Powell's *Practical Notes on the Management of Elections*. This literature will supply, in convenient and compact form, most of the essential information.

When that information has been obtained, when the act has been appraised in the light not only of its purposes and terms but also of its enforcement and effect, what useful inferences can we draw? After all, the act of 1883 was intended to cure specific abuses; it took the form that was appropriate to its peculiar political environment. The American environment reveals more than one striking contrast to the British. Above all, observe the complexity of our electoral processes: national campaigns, state campaigns, and local campaigns proceeding simultaneously; each party putting forward a ticket that may embrace thirty or forty offices; funds being collected and spent by individual candidates and by a whole series of interlocking committees; the national committee transferring funds to this state committee and that county committee, sometimes for uses that would not bear too close inspection—altogether a scene of confusion and chaos defying ordinary means of regulation. In Great Britain, on the other hand, there is only one campaign, one election, one office to be filled. Obviously, the act of 1883 cannot be applied in the United States unless existing political conditions are modified to suit the act or the act modified to suit existing conditions. But the underlying principles of the act are valid; and it can be shown, I think, that where these have been best understood and most completely applied our legislation has achieved its largest measure of success.

I have in mind three main principles: first, limitation upon expenditures; second, concentration of responsibility for expenditures; and, third, reliance upon self-interest in the matter

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of enforcement. The first principle is the only one that is at all generally recognized in our legislation. Three-fourths of the states fix a maximum expenditure for candidates. While such a restriction can be justified on many grounds, such as the encouragement given to independent candidates and relatively poor men, the chief argument is that, when resources exceed actual legitimate needs, the surplus is commonly diverted into corrupt channels But the maximum can be justified only if it is a reasonable one, approximating the legitimate needs of a campaign; and in our statutes a most amazing variation of standards is encountered. The limitation may be in one state drastic and in another lenient to the point of obvious absurdity; or, though reasonable in amount, it may be quite meaningless because of the exceptions that are attached to it. We find ourselves in a region of unutterable disorder; for, while the principle of a maximum has been accepted, its application has been arbitrary and haphazard; and the effect of limitation has been neutralized, except in half a dozen states, by the fact that party committees may spend any amount whatever in behalf of party candidates. Finally, far too little has been done in the way of prohibiting expenditures that are harmful or unnecessary and of defining with precision the purposes for which money may lawfully be spent.

The second principle is concentration of responsibility. How does the act of 1883 establish it? The candidate is required to appoint a plenipotentiary, an agent. "The election agent," said Mr. Justice Field in the Barrow petition of 1886, "is the person who shall be effectively responsible for all the acts done in procuring the election. . . . . He is to hire everybody; no man is to be paid money that does not pass through his hands. . . . . He is a known and responsible man who can be looked to afterwards for an explanation of his conduct in the management of the election." It is the election agent who makes all arrangements, assumes all obligations, pays all bills, and who, five weeks after the election, submits the required statement of expenditures. No other person, says an act of 1918, may incur any expenses for the purpose of promoting or procuring the

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election of a candidate unless authorized in writing by the agent to do so. Thus the Tariff Reform Union or the Anti-vivisection Society may not spend money in behalf of a candidate without securing such authority, and the candidate may not profit from such support without including the money so spent in his election statement. The local party organization is similarly affected. Commentators on the law, it is interesting to observe, advise the organization to dissolve formally for the period of the campaign.

This principle of concentration, which is a vital part of any scheme of restraint upon campaign expenditures, has been almost universally neglected in the United States. It has been neglected partly because of failure to realize its importance and partly because of the difficulty of adjusting it to American conditions. The difficulty is patent. Since we elect at one time a host of national, state, and local officers, and elect them usually as Republicans or Democrats, the county campaign forms part of the state campaign, the state campaign part of the national campaign. In any given district, all the candidates on the Republican ticket are united in a common enterprise. The various Republican committees are spending money in the interest of the whole ticket. If they buy votes, everybody profits. Where is the magic formula that will concentrate responsibility? The problem would be simplified if national elections were separated from state elections—and with a four-year term for representative and an eight-year term for senator the separation might be made complete. The problem would be simplified still more if state elections were separated from local elections and our state governments reconstituted upon the Canadian model, with a responsible executive and a single chamber. Simplification of the election process! The short ballot! Here we have the key to many desirable forms of responsibility besides the one being considered now. But it was not a politician who called responsibility the finest word in the English language. This simplification is a vague and distant prospect, if not a chimera.

Nevertheless, taking things as they are, some little advance can be made. Consider the Wisconsin law. This follows British

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precedent in requiring the candidate to have a personal campaign committee, of one or more persons, which shall control his limited campaign fund in the manner of the election agent and which shall generally be presumed to act with his knowledge and approval. But what of the party organ, the state or county committee, which is working and spending money for his election? The funds at the disposal of any committee are contributed solely by the candidates and charged against the maximum expenditure that the law allows them. A single exception is made in the case of the state committee; it may make further disbursements aggregating $10,000.

Wisconsin has made an advance, but apparently not a sufficient advance. It holds the candidate responsible for the acts of his personal campaign committee, but not for the acts of the party committee, which he has subsidized. Let me turn for a moment to the practice in Great Britain. There the special doctrine of election agency differs from the ordinary legal doctrine of agency. It is designed to reach instances where a candidate seeks to profit by the misconduct of others, while denying that he is responsible for their acts or capable of controlling them. The substance of the doctrine, according to an opinion in the Great Yarmouth case, is that "if a man is employed at the election to get you votes, or if, without being employed, he is authorized to get you votes, or if, though neither authorised nor employed, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible." According to this doctrine, the local organization becomes an agent of the candidate if it supports him in the campaign and if he accepts its support. Why should the candidate in Wisconsin escape a like responsibility? He has made a contribution to the party committee—perhaps amounting to the whole of his maximum allowance for the campaign. His political fortunes depend largely upon the efforts of this committee. It seems to follow that violations of the law should be brought home to him. Without such a rule there can be no effective concentration of responsibility.

The third principle concerns enforcement. It relies upon the

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motive of self-interest. Now, according to the principles already examined, a candidate is strictly limited both in the nature and in the amount of his expenditures, and, being responsible for the acts of his agents, becomes involved in corrupt practices that are committed in furtherance of his election. But how is his guilt to be established? The district attorney may be reluctant to prosecute, either because the culprit belongs to his party or because the parties have a vague sort of gentlemen's agreement to ignore the law and proceed according to the familiar, customary rules of the game. He concludes, therefore, that the evidence will not justify his going before the grand jury; or he presents the evidence in such a fashion that the grand jury will not act upon it. His derelictions, disguised as they are, do not greatly agitate a tolerant public. Indeed, a jail sentence may seem cruel and unusual punishment—it certainly is unusual—for misguided generosity in the campaign.

If the law is to be effective, two conditions are necessary. First, the penalty for the successful candidate, when he or his agents have committed wrongful acts, must be removal from office. Then the fear of having his election set aside will restrain a candidate from taking serious risks or allowing his agents to do so; and his opponent will be constantly on the alert to catch him in some violation of the law. Here is the motive of self-interest. Its force and sufficiency will depend upon the second condition. The law must make it easy for any voter—that is the defeated candidate—to attack the validity of the election in the courts. In this matter the Wisconsin corrupt-practice act improved upon the British act of 1883. I cannot enter into the details. The significant feature of the Wisconsin law is this: the petitioner may apply to the county judge or the state attorney-general or the governor—to each in turn if he meets with a rebuff—for leave to bring a special proceeding and for the appointment of special counsel; and no judgment for costs shall be awarded against him unless he is shown to have instituted the proceeding otherwise than in good faith. He is not only reasonably secured against political obstruction, but

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also free from the embarrassment of the heavy costs which discourage the bringing of petitions under the British act. From the theoretical standpoint, at least, these arrangements seem entirely adequate. The one man who has a personal incentive to enforce the law is provided with means of action.

I have formulated three principles, three sacraments, as it were, of corrupt-practice legislation. According to my canons of faith, they are generally necessary to salvation. They are at the same time neglected almost everywhere, neglected through ignorance. The situation, therefore, calls for missionary zeal and organized, informed propaganda.

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Campaign Funds in 1928. During the important political year 1928 no fewer than five separate congressional committees were engaged in investigating various phases of the problem of campaign funds. First, the Reed committee, which was appointed by resolution of the 69th Congress to investigate the elections of 1926, was continued in existence so that it could wind up its work.[1] In addition, it was given authority by a new resolution of the 70th Congress to investigate the New Jersey senatorial primary of 1928.[2] Second, the committee on privileges and elections of the Senate was authorized to hear and determine the Wilson-Vare election contest in Pennsylvania.[3] A sub-committee, with Senator Waterman as chairman, was selected on January 27 to perform this task. Third, the Senate created a special committee to investigate pre-convention and election expenditures in the campaign of 1928.[4] Senator Steiwer was appointed chairman of this committee. Fourth, a special House committee was appointed on the day before the close of the session to look into the campaign expenditures of 1928, with Congressman Lehlbach of New Jersey as chairman.[5] Finally, the Senate by resolution authorized the committee on post offices and post roads, or any sub-committee thereof, to investigate the alleged sale of Southern postmasterships, and Senator Brookhart was appointed chairman of the sub-committee.[6]

[1] Senate Resolutions 10 and 178 of the 70th Congress continued in full force and effect the following Senate resolutions of the 69th Congress: 195, 227, 258, and 324.

[2] Senator Caraway offered the resolution (Senate Resolution 232) on May 16 which authorized the Reed committee to look into the New Jersey primary. The members of the Reed committee are: Reed, McNary, Goff, La Follette, and King.

[3] Senate Resolution 68. The committee is as follows: Waterman, Steiwer, Moses, Caraway, and Bratton.

[4] Senate Resolutions 214 and 234. By Senate Resolution 255 this same committee was authorized to investigate war-time sugar transactions. The members of the committee are: Steiwer, Dale, McMaster, Barkley, and Bratton.

[5] House Resolution 232. Mr. Snell, in offering the resolution, stated that the committee "would not go snooping around the country prying into a person's private affairs." The investigation, he said, was not to be a general one, but was only to be concerned with those cases which the committee felt necessary to treat. The following are members of the committee: Lehlbach, Newton (resigned when he was appointed chairman of the Western speakers bureau of the Republican national committee), Nelson of Maine, Ragon of Arkansas, and Black of New York.

[6] Senate Resolution 193.

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The Reed committee held hearings in April and May in connection with the Wilson-Vare contest in Pennsylvania, and in June in connection with the New Jersey senatorial primary. These investigations did not lead to any particularly valuable disclosures, although they produced some interesting and enlightening information about the Vare machine.[7] The committee was unable, however, during the year to bring the controversy over the seating of Mr. Vare to a close. On December 9, 1927, at the opening of the 70th Congress, the Senate had passed a resolution denying a seat in that body to Mr. Vare until the Reed committee should have reported, "and until the final action of the Senate thereon." On December 26, 1928, the Reed committee sent a letter to Mr. Vare reviewing the history of the investigation and notifying him to appear before the committee on January 4, 1929. Apparently the committee desires to have the matter concluded before the adjournment of the present session of Congress.

The Waterman committee held hearings in Philadelphia and Pittsburgh and continued its recount of the ballots cast in the Pennsylvania senatorial election of 1926. Although it has reported progress, it has not been able, and will not be able for some time, to submit a final report to the Senate.[8]

The Steiwer committee got to work promptly after its appointment and took four volumes of testimony dealing with the pre-convention campaign.[9] The committee examined nearly every one who was in any way connected with any candidacy, real or imagined. Included in the list were many United States senators. In fact, the first part of the hearings would lead one to suppose that the Senate is the natural breeding place for presidential nominees. Although the testimony was of little immediate or permanent value, it was worth having, because it brought into the open a number of matters which, without the investigation, would never have been known. To throw the light of publicity upon the obscure work which goes on during the pre-convention period is indeed desirable. Of course there was a good deal of balderdash in much of the testimony, and much of it was carried

[7] See the Hearings of the committee in these connections.

[8] No Hearings have as yet been printed.

[9] Hearings, Special Senate Committee Investigating Presidential Campaign Expenses, Parts 1, 2, 3, and 4. Part 4, pp. 1095–1129, contains a statistical summary of the receipts and expenditures made by or on behalf of the candidates for the Republican and Democratic presidential nominations during the pre-convention period.

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on for political effect. But any kind of a check-up or investigation of underlying political forces has its value.

This committee required all political committees to submit to it complete reports of campaign expenditures. The party committees have been most regular in meeting this requirement, and the committee has a complete file of all campaign receipts and expenditures. Following the submission of the final party accounts on January 1, the committee expected to make its recommendations and report to the Senate.

The special House committee under Congressman Lehlbach also required the party committees to submit their campaign accounts. Several hearings were held, but the committee did not exert any influence on the campaign, nor had it, up to the time this article was written, carefully considered the problems involved in the use of money in elections. Its little investigation in Texas could have been conducted by one of the regular House committees on elections, while on the other hand several profitable fields of exploration were open to the committee. But it preferred to let well enough alone. Thus another committee which might have helped along the difficult problem of campaign funds with some constructive suggestions has appeared, sunned itself in the burning heat of publicity, and disappeared without making even so much as a ripple on the surface of political practice.[10]

Senator Brookhart's committee, which had allotted to it a very important subject for investigation, namely, the alleged sale of presidential offices in the South, held several hearings which have not been published. Various Southern congressmen appeared before the committee to testify about patronage matters, and the secretary of the Civil Service Commission made certain suggestions for the improvement of political conditions in the South. It will be remembered that the Civil Service Commission has been investigating the sale of offices in the South, and that the Department of Justice has several indictments pending in Mississippi against Republican politicians in that state. To date, the committee has not made any recommendation to the Senate.

One must say, therefore, that although there has been a plethora of committees and an abundance of investigating, the results are not particularly helpful in improving undesirable practices connected with

[10] The committee did announce to the press that it was contemplating further investigations into the political expenditures of several political organizations, but to date these investigations have not occurred.

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the use of money in elections. Nevertheless, the public is learning more and more about the unsavory political practices which still flourish in this country, and these investigating committees have been the means by which the public has been further informed. The existing federal law, however, continues to cry for amendment, and little progress is being made. These committees undoubtedly have had certain negative effects. They have provided some check which might not otherwise have been forthcoming, and they stood ready to look into any situation which might have developed. But one cannot avoid some feeling of disappointment that they did not take advantage of their opportunities to point a moral, if not to bring about specific improvements.[11]

During the first session of the 70th Congress, a number of bills and resolutions were introduced in both the Senate and the House to amend the existing corrupt practices act and to amend the Constitution. The House committee on the judiciary held a hearing on a proposed constitutional amendment introduced by Representative Rathbone,[12] and the Senate judiciary committee reported out favorably Senator McKellar's bill to amend the federal corrupt practices act.[13] The other bills, with one exception, did not receive any attention;

[11] Mention should be made of the Hearings before the Senate committee on public lands under Senate Resolution 101. Part 2 of these Hearings contains a great deal of interesting testimony relating to campaign funds, including Mr. Hays' after-thoughts. Evidence is given showing how party deficits were handled in previous years and how loans were made. A New Jersey legislative investigating committee, under the chairmanship of Senator Clarence E. Case, has been delving into the politics of Hudson county. Some of the inside workings of the Hague machine have been uncovered. At one session of the committee Senator Case, from the available testimony, showed that approximately $370,000 was raised in Hudson county annually from political assessments.

[12] H. J. Res. 277.

[13] By reporting out this bill the Senate judiciary committee puts itself on record as favoring the proposal to amend the present corrupt practices act by extending its terms to include primary elections. In the report the committee, through Senator Caraway, argued that it is not necessary to amend the Constitution in order to give Congress jurisdiction over primary elections. The committee indicated that the Newberry decision is no bar to Congressional action to extend the terms of the corrupt practices act to include the nominating process. In 1925, when the present act was passed, the Senate was afraid to regulate nominations. Today its judiciary committee, through a carefully worded bill which makes it perfectly clear that the Senate considers the nomination process as an inseparable part of the election machinery by which members are sent to Congress, has taken an opposite but a better position. See S. 4179 and Senate Report No. 895.

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nor did they arouse any discussion.[14] The exception refers to the bills and resolutions introduced by Senator Cutting of New Mexico. This new comer to the Senate introduced five measures intended to bring improvement in the present legal regulation of campaign funds. Two of his measures proposed constitutional amendments; the other three were proposed laws amendatory of the present laws. On May 11, when Senator Cutting brought these measures to the attention of the Senate, there was an interesting discussion of the problem of the regulation of campaign funds. The Senator's proposals, while incomplete and temporary in some respects, represent a commendable attempt to bring this serious matter before the Senate and to press for a solution.[15]

Coming now to the financial outlays in the campaign of 1928, we find many features which require considerable attention. In the first place, the year 1928 marks the highest point to which campaign expenditures have ever gone in the history of the country. According to the final accounts filed in pursuance of law by the treasurers of the Republican and Democratic national committees, the following sums were received and expended for the purposes of the presidential campaign:

	Receipts	*Disbursements*
Democratic National Committee	$3,844,958.43	$5,342,349.89
Republican National Committee	3,814,815.45	3,529,178.25

For the second time in recorded history, the Democratic national committee expended more money than the Republican national committee.[16] Furthermore, the Democratic national committee has reported an expenditure larger than that of any national committee

[14] See S. 3914, S. 3971, and S. 3972 introduced by Senator Shipstead; S. 825 by Senator Hawes; and S. Res. 129 by Senator Neely. Also H. R. 6101, 12770, 12905, 12906, 12907.

[15] S. J. R. 149, S. J. R. 150, S. 4422, S. 4423, and S. 4424 are the measures referred to. These contain many excellent provisions, including one providing for the creation of an election commission, and others which would eliminate several of the loopholes in the present law. See *Congressional Record*, vol. 69, pp. 8718–8728 (May 11, 1928).

[16] The other occasion when the Democrats expended more money than the Republicans to elect a president was in 1912. But in that year the Republicans were divided, and the Democratic outlay, although larger than that of the regular Republicans, was not as large as the combined Republican and Progressive funds. The Democratic disbursements in 1912 amounted to the modest sum of $1,134,848.00. See my *Party Campaign Funds*, p. 27, for a table showing the accounts of the national committees of the two parties since 1912.

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in history, the only approach to its achievement being the Republican outlay in 1920.[17] The Democratic national committee succeeded in raising the largest sum of money for a national campaign yet known. The total amount raised by the Republican national committee, both for its own purposes and for the use of the state committees, was the unprecedentedly large sum of $6,541,748.05, a really remarkable achievement. The expenditures of the national committee were likewise larger than in 1924 by about half a million dollars. The sum raised by the Democratic committee was the largest the party has ever known, and its achievement in this respect should not be lost sight of.

The expenditure of such huge sums of money in political campaigns always causes tongues to wag. But, interestingly enough, this campaign has been the first in recent decades which has not raised the cry of "slush funds." Both parties being adequately financed, there was no reason for either to complain about the other. After all, it is not the size of the fund that is most important. We should have learned by this time that the source of the fund and the manner of expenditure are factors of much greater importance. Nine million dollars does not seem to be an unreasonable amount to expend in a country of this size, with its vast territory, its enormous and heterogeneous population, and on a campaign which lasts four months.[18] Legitimate expenses come high, and although there is always much wastage, those who are in charge of the campaigns cannot afford to take chances. It is easy, after the campaign is over, to editorialize about how unnecessary it was to spend so much money, to say that the result would have been the same regardless of the expenditure of money, and to aver that several million dollars less would have sufficed. But the presidency is a prize which cannot be thrown away, and although we have fortunately passed the time when national elections

[17] A somewhat confusing but entirely justifiable system of collecting money was used by the Republicans. Mr. Nutt, the Republican treasurer, acted as agent not only for the national committee but also for the state committees. Thus, two solicitations of the same persons for two committes were rendered unnecessary. Part of a contribution could be earmarked for the national committee and part for a state committee. The figure given above for the Republican national committee represents only the money received and spent directly for the national committee. To include the funds collected for the state committees would result in making an inaccurate comparison with the Democratic national committee fund.

[18] The writer's opinion in this regard has been strengthened after a year's study abroad observing the use of money in English, French, and German elections.

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can be bought, managers must be eternally vigilant to do everything possible to forward the interests of their candidates.

The second important observation to be made regarding the campaign of 1928 and its money outlay concerns the question of sources. How could such huge sums be raised, and where did all this money come from? The answer is quite the same as would be made after any recent presidential campaign. "Them who has, gives." The only trouble is that the rank and file of the parties have never adequately supported the parties financially, and that the bulk of the party funds must come from the richest persons. In this campaign the treasurers continued the commendable practice of former campaigns by attempting to widen the subscription lists so as to include as many contributors as possible, in other words, to democratize party funds. And their efforts were rewarded to a certain extent. There were no fewer than 90,000 contributors to the Democratic fund and 145,000 to the Republican fund. This is the largest number of contributors either party has secured in any campaign. The bulk of the two funds, however, continues to be subscribed by a comparatively small number of large contributors. The parties in the recent campaign did not place a limit on the size of party contributions, the Hays $1,000 rule of 1920 having apparently been considered unworkable. Consequently, there were many large contributions.[19] As has been the case in recent campaigns, the Democrats received the largest single contributions, although there were not as many large contributors to their chest as to the Republican.

The expenditure of these large sums of money did not prove a difficult task. In recent years political campaigns have become more and more expensive because of the use of advertising media of one sort or another, and in the recent campaign for the first time, because of the use of the radio. In this campaign the Democratic national committee expended nearly $600,000 for radio facilities. The outlay for newspaper advertising, both nationally and locally, was very large, and the cost of headquarters in the leading centers of the country was greater than ever before. For the first time in many years, the Democratic party was able adequately to finance a thoroughgoing national campaign, its subsidies to the various state committees being

[19] The largest single contributions were made by W. F. Kenny and John J. Raskob, who gave $100,000 each to the Democratic national committee. There were several other Democratic contributions which were larger than the largest single Republican contribution, which was made by W. H. Crocker in the sum of $30,000.

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very generous.[20] Whatever may be said about the allocation of funds to various purposes, it must be admitted that the generous expenditure of money by both national committees had much to do with heightening the interest of the country in the election and in making the campaign of 1928 indeed one of the most interesting in American history.

The problem of party deficits is still with us. The Democrats ended the campaign with a shortage of approximately $1,500,000. This deficit does not represent outstanding obligations of any kind to merchants who have done business with the committee. It represents loans made to the committee by twenty-five or thirty of Governor Smith's personal friends and political supporters. On the Republican side, there was a large surplus. In 1924 the Republicans, for the first time since 1900, ended with a surplus, and their efforts in 1928 were also rewarded handsomely.[21] But it is not meant to imply that the problem of party deficits is solely a Democratic one. As recently as 1920 the Republican national committee had a deficit of approximately $1,200,000, and the experience in wiping out that deficit has demonstrated the dangers of all deficits.

Ever since we have had a reasonably good public accounting of party expenditures in presidential campaigns, both parties have had recurring deficits. In fact, deficits are the rule and not the exception. Until 1924, both parties ended their campaigns with large deficits, and carried these deficits during most of the time between campaigns. Until the amendment to the federal corrupt practices act was enacted in 1925, we had no knowledge of how deficits were handled. Now, party committees must file accounts throughout the years intervening between campaigns, as well as during and immediately after campaigns, and we are thus able to know how deficits are paid off. Prior to this requirement, if it had not been for the investigation into the oil leases conducted by the Senate committee on public lands we should never have known of Mr. Sinclair's part in wiping out the Republican deficit of 1920. Nor should we have had the enlightening information which this investigation gave us about party deficits in general.[22]

[20] The Democratic national committee donated $500,000 to carry on the campaign in the Western farm states, and $125,000 to the Smith Colored League to work among the negroes of northern cities.

[21] In 1924 the Republican surplus amounted to $355,000, the largest ever recorded. In 1928 the surplus was $285,637.20.

[22] See Hearings, Senate Committee on Public Lands, pursuant to S. Res. 101, 70th Congress, Parts 2 and 3. (Leases upon Naval Oil Reserves.)

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The problem of party deficits is more than a mere business problem. One can scarcely imagine a good business man running himself in debt with so much gusto and carefreeness as our party managers do. But party deficits are more than business deficits. They are in a very real sense public deficits, and if party managers continue to spend more money on their campaigns than they have collected, some definite action must be taken.[23]

Several considerations against party deficits immediately come to mind. The spirit of the publicity law is violated if the expenditures of the campaign are partly defrayed from money which comes from sources unknown to the voters when they cast their ballots. Some politicians know how to collect tainted money after they have won the election. Again, party committees must devote too much time in the interval between elections to the paying off of the deficit, time which could be spent more profitably in educating the voters. Furthermore, party officials are relatively much more grateful for contributions made to clean up a big deficit than for contributions made during the campaign. Only the *very* generous can be expected to contribute to a cause which has been unsuccessful, and only the *most* interested to a cause which has been popularly successful but financially unsuccessful. There is room here for party favors of an undesirable sort. Therefore, why should we have party deficits? If a national committee is unable to raise more than three and a half million dollars, why should it be allowed to spend more? Well, it always has been permitted to do so!

In addition to expenditures by the national committees, we find, of course, very large expenditures in several states and localities.[24] The New York county Democratic committee filed an account with the board of elections showing an expenditure of $245,000, the largest in its history. The Pennsylvania state campaign cost the Republicans $446,000, the Democrats $170,000.

[23] New Jersey has taken such action. Article XXIX, Par. 514, Sec. 24, of the election laws states: "No campaign manager, ... shall authorize. . . .the incurring of any expense . . . . unless there are moneys on deposit in the bank selected in accordance with the provisions of this act, to the credit of the account known as the campaign fund. . . . ." I have not been able to investigate the operation of this provision.

[24] The senatorial and congressional campaign committees were financed largely by their national committees. The Republican senatorial committee received $116,000 from the national committee, while the congressional committee received $228,500 from the same source. The Democratic senatorial and congressional committee expenditures were not large.

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Nor were the various non-party associations "pikers." The Association against the Prohibition Amendment expended slightly under $300,000; the Anti-Saloon League about $61,000; and the Women's Law Enforcement Campaign Committee about $150,000. The regulation of the expenditures of these non-party groups is quite as important a matter as the regulation of party expenditures. Until we definitely fix responsibility in the matter of political disbursements, and prevent indiscriminate spending of money by every "pro" or "anti" or personal committee that comes along, we cannot expect to eliminate wasteful and unnecessary spending. Locally, this problem is even more important than it is nationally. The creation of an unlimited number of subsidiary committees should not be permitted to cover up the real amount of money raised or expended.

All in all, the year 1928 was an outstanding one from the point of view of party funds. The year records the greatest expenditure of money yet known to American politics. And still the expenditure of these huge sums has not been accompanied by fraud and corruption as was the case in years gone by when much smaller sums were used. More persons contributed to the funds of both parties than ever before, and the accounts, which were carefully kept by two able treasurers, were made public in such a way that the voters could know just how the party war chests were being handled. One party had a large deficit, the other a large surplus, but both parties conducted intensive campaigns, with the result that there was a greatly improved popular participation in the election. Thus the year has registered distinct gains.

There remain, however, many troublesome problems connected with election expenditures. Our laws in many respects continue to be quite innocuous, if not positively bad. Although it is apparent to most political observers that the whole level of politics has been raised in the last twenty-five years, it is clear that our legal regulations have not kept pace with the times. The grossest forms of fraud and corruption are still possible, and political hijackers still have room to work. A vigilant and high-minded electorate should not longer continue to rely upon chance to keep elections pure.

In 1928, as in all political years (and what years are not political?), money has been an important consideration. The results have not been in accordance with the size of the party funds, as skeptics like to point out. That is to say, the largest fund does not always produce the winner, and did not always produce winners in the year 1928.

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Money is no more important today than formerly. But its regulation continues to be a matter of urgent public importance. Unless the springs of public policy are undefiled, we cannot escape contamination. Unless unscrupulous schemers are ruled out by an alert public giving support to adequate laws, party funds, instead of being a public good, will become a public menace.

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Expansion of the Publications of the Department of State. In all countries, the publications of the foreign office hold a peculiar position among government documents. Statesmen appear to be more reticent in informing the public on foreign relations than in regard to any other governmental function. This reticence seems to obtain in democracies as well as autocracies. There are exceptions, such as post-war Germany and Soviet Russia, where the new governments entered upon a policy of disclosing almost everything in past diplomacy for the purpose of exposing the incompetency of the Hohenzollern and Romanov régimes. But these exceptions are conspicuously few. It is, of course, too much to expect foreign offices to publish all diplomatic correspondence and official reports. Some of these communications concern private persons whose affairs should not be exhibited to public gaze. Other papers contain tentative proposals and counter-proposals made in the course of negotiations, and should not, in fairness to all governments involved, be published at the time. Finally, much of the correspondence is merely routine. Nevertheless, it will probably be generally conceded that in a democracy the people ought to have opportunity for wide information regarding the conduct of foreign relations.

In the United States the chief official sources of information include: the President's annual message, *Foreign Relations*, the *Treaty Series*, mimeographed press releases, the *Register of the Department of State* and other lists, and occasional documents issued by the Department of State. It has been the practice of the President to devote a large portion of his annual message to Congress to a resumé of international relations for the year. Indeed, this state paper constitutes the only regular official review of the work of the Department of State. Nine of the ten departments represented in the President's cabinet make annual reports which are duly transmitted to Congress, but the Secretary of State makes no published report. In 1896 Secretary

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Olney published a report, but no similar public document has ever been issued.[1] While it is true that under the Constitution the President is the national spokesman of the American people in foreign affairs, and that the Secretary of State is his agent, nevertheless in almost the same degree every other member of the cabinet is his agent. The space devoted to foreign affairs in the President's annual message is extremely limited, and it would be helpful to scholars and writers if the Secretary of State, like other department chiefs, would issue an annual report reviewing the administration of his department and explaining in detail the work accomplished for the year.[2]

From the time of Washington's administration the President's message has been supplemented by certain documents from the Department of State, such as treaties and diplomatic dispatches. Out of this practice of sending Congress accompanying papers grew up the publication of *Foreign Relations of the United States,* first printed among other departmental papers, and after 1861 issued in a yearly volume by itself. *Foreign Relations* continued to appear promptly at the end of each year until in 1906 it began to fall several years behind, and at the opening of the World War this document was entirely suspended. In 1922, publication was resumed; but the last volume as yet issued from the Government Printing Office is for the year 1917. Thus, *Foreign Relations* is now eleven years behind date. In this respect, our Department of State does not compare favorably with the British Foreign Office, for the corresponding English document, known as *British Foreign and State Papers,* is only three years behind date. In the meantime, the Department of State has wisely segregated the war correspondence from the ordinary correspondence and has begun the publication of a *World War Supplement* for the years 1914–18. Two of the proposed eighteen volumes of this supplement have now appeared.

Treaties and agreements are published from time to time in the *United States Treaty Series,* issued in a form similar to the "Slip Laws." These documents are published only after proclamation of each treaty.

[1] This document, entitled "Report of the Secretary of State to the President, December 7, 1896," followed the annual message of President Cleveland as published in *Foreign Relations* (1896), pp. lxiii–xciii. It was also printed as a separate document.

[2] An able argument for the publication of an annual report by the Secretary of State was made by Professor Manley O. Hudson in the *American Journal of International Law,* July, 1928. pp. 624–629.

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The Department does not publish the texts of treaties that have been negotiated but not yet ratified. For instance, the text of the important American-Turkish treaty of August 6, 1923, has been printed as a confidential document by the Senate, and it was made public on March 24, 1926, but its text is not generally available to the public as a government document.[3] The proclaimed treaties are published from year to year by the Department of State in the *United States Statutes at Large*. But there does not exist any up-to-date collection of treaties published by the Department. The latest compilation is the admirable *Treaties and Conventions*, with notes by Bancroft Davis, the most recent edition of which appeared as far back as 1889. Ten years later the Senate committee on foreign relations took over publication of the compilation of treaties. Under its supervision, in 1910, two volumes, commonly referred to as Malloy's *Treaties*, were published. In 1923, a third volume appeared. Unhappily, the Malloy edition was prepared without comparing the text of the treaties with the originals in the Department of State, and consequently errors are numerous. An authentic annotated compilation of treaties is one of the urgent needs of jurists and teachers. Recently the committee on foreign relations relinquished to the Department of State its supervision of the compilation of treaties, and thus it appears that a new edition of *Treaties* awaits an adequate appropriation by Congress.[4]

For some years the Department has issued press releases which are accessible to all newspapers and are mailed to a limited number of teachers and publicists. These mimeographed sheets, together with the daily interview granted by the Secretary of State to newspaper correspondents, furnish the chief source of current information as published in the press. The *Register of the Department of State*, issued annually, the *Diplomatic List*, issued monthly, and several other similar lists indicate the personnel of the Department and the Foreign Service, as well as of foreign representatives in the United States. Finally, it should be noted that the occasional documents issued by the Department in recent years have been limited in number. Before

[3] Compare *Message of the President of the United States Transmitting a Treaty to Regulate the General Relations between the United States and Turkey, signed at Lausanne, on August 6, 1923.* Confidential. 68th Cong., 1st sess., Executive Z.

[4] Compare the testimony of Dr. Tyler Dennett in *Hearings before Subcommittee of House Committee on Appropriations in charge of Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1930, Seventieth Congress, Second Session*, p. 59.

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the World War the output by the Department was far more extensive. In 1886 there appeared the invaluable compilation known as Wharton's *Digest of International Law*, in three volumes, which was enlarged in 1908 as Moore's *Digest of International Law*, in eight volumes. Numerous volumes of arbitrations were published from time to time, but nothing since 1910. Among the few publications in late years are the *Report of the Commission on Extraterritoriality in China* which appeared in 1926, the *Brief History of the Relations between the United States and Nicaragua, 1909–1928*, and the *General Pact for the Renunciation of War* which appeared in 1928. All of these documents are pamphlets. Recent publications do not include the minutes of international conferences in which the United States has participated, such as the Economic Conference in Geneva in 1927 and the Sixth Pan American Conference at Havana in January-February, 1928. A report of the delegates to the latter conference has been published, but this document does not adequately meet the needs of the student of international affairs who desires the text of all the discussions in at least the plenary sessions if not in the committees.

It is thus apparent that the publications of the Department of State do not meet the needs of teachers of international relations. Since 1924 the post of editor and chief of the division of publications in the Department has been filled by an extremely able scholar, Dr. Tyler Dennett, who possesses the confidence and coöperation of universities, learned societies, jurists, and publicists throughout the country. The funds at his disposal, however, have been far from adequate, and it is to be regretted that teachers and scholars have been dilatory in organizing to present their case to the Department and to secure the necessary appropriations from Congress.

A concerted movement to urge the enlargement of the publications of the Department of State began with resolutions adopted by the Second Conference of Teachers of International Law, held in Washington, D. C., in 1925.[5] Little was accomplished by this action beyond securing arrangements with the Government Printing Office whereby prompt delivery of the *Treaty Series* might be secured by placing a deposit of ten dollars with the Superintendent of Documents. In the Third Conference, held in 1928, Professor Manley O. Hudson, of the Harvard Law School, in a trenchant paper again raised the question

[5] *Proceedings of the Second Conference of Teachers of International Law and Related Subjects, Held in Washington, D. C., April 23–25, 1925*, pp. 55–58, 120–121.

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of the enlargement of the scope of the publications of the Department of State.[6] As a result, a committee was appointed to confer with the President of the United States, the Secretary of State, and the appropriate committees of the Senate and House of Representatives. The membership of this committee included Professors Roland S. Morris, University of Pennsylvania; Edwin M. Borchard, Yale Law School; Quincy Wright, University of Chicago; Daniel C. Stanwood, Bowdoin College; and Kenneth Colegrove, Northwestern University.

A few days after the sessions of the Third Conference, the American Society of International Law, at its annual meeting, agreed to coöperate with the Third Conference. The president of the Society, Charles Evans Hughes, an ex-secretary of state, gave warm approval to the project and expressed himself in the following picturesque language: "When I was in the Department I used to wish that I could get on the roof of the State Department with some kind of megaphone which would reach from the Atlantic to the Pacific and tell everything that I had done, and read every telegram and despatch, and leave it to the American people. The trouble is that they do not know, and we need to impart."[7] A committee consisting of Messrs. William C. Dennis, Henry W. Temple, and Charles Henry Butler was appointed to represent the Society in coöperation with the Teachers' Conference.

The two committees soon called upon President Coolidge, Secretary Kellogg, and other officials in the Department of State, and urged the following proposals: (1) that the press releases be printed, published serially and distributed, and placed on sale by the Superintendent of Documents in the Government Printing Office; (2) that serial publications be issued, in pamphlet form, of diplomatic correspondence, official reports of American delegates to international conferences, and proceedings of and documents connected with such conferences, at frequent intervals, and that there be as liberal a publication of such official documents as is consistent with the public interest; (3) that the publication known as *Foreign Relations* be brought up to date as rapidly as possible; (4) that the cases and coun-

[6] "The Department of State and the Teaching of International Law and International Relations," *Proceedings of the Third Conference, 1928*, pp. 31–52, 170–177.

[7] *Proceedings of the American Society of International Law, 1928*, p. 141. An account of the action of the American Society of International Law, as well as of the Third Conference, is given by George A. Finch under the title of "Enlargement of the Publications of the Department of State" in the *American Journal of International Law*, July, 1928, pp. 629–632.

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ter-cases and the oral arguments of all arbitrations to which the United States is, or has been, a party since the Fisheries Arbitration, 1910, be published by the Department of State; and that this practice be adopted as to the future; (5) that appointments made under treaties to which the United States is a party be published; (6) that hearings before the House committee on foreign affairs or the Senate committee on foreign relations be published in congressional numbered documents and be placed on sale by the Superintendent of Documents; (7) that a periodical catalogue of goverment documents relating to our international relations be published by the Department of State; (8) that the treaties, conventions, executive agreements, including postal conventions, protocols or exchanges of notes resulting in agreements, to which the United States has been a party be published by the Department of State in an exhaustive and authentic edition, annotated and indexed as completely as possible; (9) that, in view of the necessary brevity of the report on foreign relations in the President's annual message, the Secretary of State be urged to submit to the President an annual report of the Department of State and of the foreign relations of the United States; and (10) that the personnel of the division of publications of the Department of State be expanded to meet these requests for information on our international relations, and that adequate facilities and appropriations be supplied for this purpose.

It was estimated that the adoption of this publication program would entail an anual expenditure of about three hundred thousand dollars, a portion of which would be recovered by the sale of these documents at the Government Printing Office.

The Department of State took a sympathetic attitude toward the proposals of the committees. It hesitated to accept the entire program of publication, but it expressed its willingness to expedite the publication of the *Foreign Relations*, prepare a new edition of the *Treaties*, and initiate an information service on current diplomatic subjects. For this purpose a supplementary estimate of $42,420 for personnel was forwarded by the budget officer of the Department. In support of this estimate, the committee from the American Society of International Law made a statement before the Senate committee on appropriations while the Second Deficiency Appropriation Bill was under consideration, but the session was too far advanced to permit the amendment of that bill.[8]

[8] *Hearings before the Subcommittee of the Committee on Appropriations: United States Senate, Seventieth Congress, First Session, on H. R. 13873*, pp. 53–54.

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In the summer of 1928, when the budget for 1930 was under preparation, the State Department prepared an estimate of $77,000 to inaugurate the new publications program. This included $33,000 additional personnel for editing the proposed *Information Service*, as well as $26,000 for printing and binding. Of the last item, $10,000 was to go for the proposed *Information Service*, and $16,000 for two volumes of *Foreign Relations*. Under this arrangement, which contemplated further annual appropriations by Congress, *Foreign Relations* would be brought up to date within five years, including about 2,000 pages of ordinary correspondence for each year since the Peace Conference, and an undetermined number of volumes of the *War Supplement*. It was estimated that twenty-seven volumes of a thousand pages each would bring the series up to the year 1927. The *Treaties* would probably be issued within a few years, while the proposed *Information Service* would commence immediately or at the beginning of the fiscal year, namely, July 1, 1929. The later publication was expected to include selections from diplomatic correspondence, questions of international law and diplomatic interest, economic reports, information on the status of treaties, and summarized reports of international conferences.

On October 4, General Herbert M. Lord, director of the Bureau of the Budget, granted a hearing to the committees of the teachers and the lawyers regarding the estimates of the Department of State. This hearing was admirably planned and conducted by Dr. William C. Dennis, who secured oral arguments not only from many members of the committees but also from three former officers of the Department, namely, James Brown Scott, Lester H. Woolsey, and George A. Finch. Two ex-secretaries of state—Robert Lansing and Charles E. Hughes—sent written statements which were entered in the record. The hearing was successful in saving the major portion of the estimates from the rigid application of "Coolidge economy." The Director of the Budget allowed $50,000 of the Department's estimate. Of this amount, $40,000 was for the entire personnel of editing, and $10,000 for printing and binding the publications to be issued in the proposed *Information Service*.

Accordingly, the budget for 1930[9] which President Coolidge laid before Congress on December 5, 1928, included an estimate of $50,000 to be devoted to the new publication program of the Department of

[9] *Message of the President of the United States Transmitting the Budget for the Service of the Fiscal Year Ending June 30, 1930*, p. a131.

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State. In the meantime there had begun the hearings before the subcommittee of the appropriations committee of the House of Representatives on the Appropriation Bill for the Departments of State, Justice, Commerce, and Labor. On November 20, Secretary Frank B. Kellogg and Assistant Secretary Wilbur J. Carr, the budget officer of the Department of State, appeared before the subcommittee, and in the course of their explanation of the Department's estimates they made emphatic recommendation for carrying out a part of the publication program urged by the teachers and jurists.[10] These remarks were supported in a detailed statement by Dr. Dennett.[11] On the following day, Dr. Dennis, representing the committee of lawyers, and Professor Charles E. Hill, of George Washington University, representing the teachers, appeared before the subcommittee, made statements, and offered documents showing the demand for more information on foreign relations.[12] As a result, the estimate of $50,000 was included in the Appropriation Bill for the Departments of State, Justice, Commerce, and Labor which was reported to the House of Representatives by the committee on appropriations, and which was passed by the House without opposition on December 20.[13] The bill is now (January) pending in the Senate.

If the bill passes the Senate and is signed by the President, an important step will be accomplished in the campaign to enlarge the publications of the State Department. Compared with other departments, our foreign office receives most modest appropriations. In 1928, Congress appropriated $475,000 for printing and binding in the Department of War, $520,000 for the Navy, $742,000 for Agriculture, and $1,855,000 for Commerce.[14] In the same year, Congress gave the State Department only $200,000. With the increasing interest in international relations, it would seem that the State Department is entitled to a larger share in the educational expenditures of the national government.

The efforts of the committees of the Third Conference and the American Society of International Law have received recent support

[10] *Hearings before Subcommittee of House Committee on Appropriations in charge of Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1930, Seventieth Congress, Second Session*, pp. 5–12, 58, 66–68.

[11] *Hearings before Subcommittee*, pp. 58–68.

[12] *Ibid*, pp. 201–221.

[13] *Congressional Record*, December 20, 1928, pp. 965–984.

[14] *U. S. Statutes at Large, 1927–1928*, pt. i, pp. 64, 84, 327, 541, 643.

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by resolutions adopted at Chicago on December 28, 1928, at the annual meeting of the American Political Science Association, as follows:

Resolved: That the American Political Science Association express its approval of the extension of the publications of the Department of State, and authorize the appointment of a committee of five to coöperate with the committees of the Third Conference of Teachers of International Law and of the American Society of International Law in conferring with the President of the United States, the Secretary of State, and the appropriation committees of the House of Representatives and the Senate.

Resolved: That the American Political Science Association commend to the attention of the President of the United States, the Secretary of State, the Director of the Budget, the Personnel Classification Board, and Congress the question of giving such classification to the editorial staff of the Department of State as will facilitate the coöperation of scholars and learned societies.

The second paragraph of the resolutions was included for the purpose of securing the support of the teaching profession in urging the State Department and the Personnel Classification Board to give such rank and salary to the editorial staff of the Department as will insure that the new publications will be edited by scholars of recognized ability. The committee appointed to represent the Political Science Association consists of Professors Jesse S. Reeves, of the University of Michigan; Frederic A. Ogg, of the University of Wisconsin; Joseph P. Chamberlain, of Columbia University; Benjamin F. Shambaugh, of the State University of Iowa; and Blaine F. Moore, of the American University. On December 30, the Association of American Law Schools, meeting in Chicago, adopted resolutions, somewhat similar in content and appointed a committee including Dean John H. Wigmore, of Northwestern University, and Professors William J. Price, of Georgetown University, and Hector J. Spaulding, of George Washington University. Supported by these additional organizations, the State Department, it is hoped, will be encouraged to expand its new program of publication and ask for larger appropriations from Congress.

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CONSTITUTIONAL LAW IN 1927-1928*

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1927

ROBERT E. CUSHMAN
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A. QUESTIONS OF NATIONAL POWER

I. NATIONAL TAXATION

A protective tariff is constitutional. While most of us—Democratic party platforms to the contrary notwithstanding—had suspected that this was true, the Supreme Court, curiously enough, never passed on the question until its decision in Hampton v. United States.[1] In that case the plaintiffs attacked the validity of the Tariff Act of 1922[2] on two grounds. In the first place, the so-called flexible tariff provision embodied in Section 315 was alleged to authorize an unconstitutional delegation of legislative power to the President. That section provides, in substance, that when the President, upon investigation, finds that differences in the cost of production here and abroad of articles produced in this country are not equalized by the tariff duties fixed by the act, he shall thereupon fix such new rates as will equalize these differences. The Court had no difficulty in rejecting this contention under the authority of Field v. Clark,[3] in which the reciprocity sections of the Tariff Act of 1890[4] were sustained. Chief Justice Taft, speaking for a unanimous Court, reviews the general theory of the separation of powers and the doctrine that legislative power may not be delegated. He emphasizes, however, that each department may properly call upon the others for assistance "so far as the action invoked shall not be an assumption of the constitutional field of action of another branch." The scope and character of this assistance, furthermore, "must be fixed according to common sense and the inherent necessities of the governmental coördination." In the "flexible" tariff provision the general principle of the legislation is clearly

* For notice concerning sale of reprints of this article, see advertising pages.

[1] 276 U. S. 394.

[2] Act of Sept. 21, 1922, 42 Stat. at L. 858.

[3] 143 U. S. 649.

[4] Act of Oct. 1, 1890, 26 Stat. at L. 567.

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stated, and the function performed by the President is merely that of filling in the details and applying the principle to concrete situations.

The second attack on the law states broadly that Congress may constitutionally lay duties only for the purpose of revenue, and that an act levying such duties for the purpose of protecting American industries is therefore void. This question, over which men have wrangled for one hundred and forty years, is settled by the Court by two lines of reasoning. First, contemporaneous legislative construction, embodied in the Revenue Act of 1789[5] and long acquiesced in, fixes the construction to be given to the Constitution. That Congress from the very beginning has deemed it legitimate to lay tariffs for protection is a matter of history. Secondly, the title of the Tariff Act of 1922 reads, "An Act to Provide Revenue, to Regulate Commerce with Foreign Countries, to Encourage the Industries of the United States, and for Other Purposes." "So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action." In other words, so long as the act may so obviously be sustained as a revenue measure, its other purposes and objects become irrelevant. The Court might have added that Congress may properly use one of its delegated powers as a means of exercising another, and that a protective tariff may be looked upon as use of the taxing power to facilitate the regulation of commerce, just as the tax on state bank notes was sustained in Veazie Bank v. Fenno[6] as a means of exercising the delegated federal power over the national currency.

In Nigro v. United States[7] the Court again reviews and sustains the validity of the Harrison Anti-narcotic Act.[8] The circumstances of this review are interesting. In United States v. Daugherty,[9] decided in 1926, Mr. Justice McReynolds, after disposing of the case, which involved no constitutional point, observed quite gratuitously, "The constitutionality of the Anti-narcotic Act, touching which this Court so sharply divided in United States v. Doremus,[10] was not raised

[5] Act of July 4, 1789, 1 Stat. at L. 24.
[6] 8 Wall. 533.
[7] 276 U. S. 332.
[8] Act of Dec. 17, 1914, 38 Stat. at L. 785.
[9] 269 U. S. 360.
[10] 249 U. S. 86.

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below and has not been again considered. The doctrine approved in Hammer v. Dagenhart,[11] Child Labor Tax Case (Bailey v. Drexel Furniture Co.),[12] Hill v. Wallace,[13] and Linder v. United States,[14] may necessitate a review of that question if hereafter properly presented." Mr. Justice McReynolds was one of the four dissenting justices in the Doremus case (and the only one now on the Court); he sided with the Court in the two child labor cases and Hill v. Wallace; and he wrote the opinion in the Linder case. In Allston v. United States[15] an attempt was made to present the question of the validity of the act, but since the indictment in that case charged only a violation of the section imposing a stamp tax on certain narcotics and forbidding their sale in unstamped packages, the Court declined to go farther than to hold that section valid, a point on which there could be no doubt.

In the present case, however, the circuit court of appeals, apparently acting on Mr. Justice McReynolds' suggestion quoted above, certified to the Supreme Court certain general questions as to the construction and validity of the Harrison Act. The first question was whether Section 2 of the act, which forbids "any person" to sell drugs except upon a written order from the buyer on a blank issued by the Commissioner of Internal Revenue, includes all persons or applies merely to the persons who are required to register and pay the tax under the first section of the act, i.e., manufacturers, dealers, physicians, etc. The Court rejected the latter narrow construction and applied the act broadly to all persons who might sell the drug. The second question was as to the validity of the act if so construed, and the Court replied that it was valid. All the detailed and incidental formality and red tape set up in the statute are reasonably designed to make it difficult to sell narcotics without paying the tax. They "tend to keep the traffic above board and subject to inspection by those authorized to collect the revenue."

Referring to the close decision in the Doremus case, and to the decision invalidating the child labor tax, the Court points out that by an amendment enacted in 1919[16] the taxes levied on the sale of

[11] 247 U. S. 251.
[12] 259 U. S. 20.
[13] 259 U. S. 44.
[14] 268 U. S. 5. See comment in this *Review*, vol. 20, p. 84.
[15] 274 U. S. 289.
[16] Feb. 24, 1919, 40 Stat. at L. 1057.

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narcotics were substantially increased, in lieu of the rather nominal levy in effect when the Doremus case was decided. The act now brings in revenue of about a million dollars a year. The Court observes, therefore, "If there was doubt as to the character of this act as an alleged subterfuge, it has been removed by the change whereby what was a nominal tax before was made a substantial one." It is believed that this is the first instance in which the Court has made the actual effectiveness of a tax in producing revenue a test of its validity. It would have been impossible to do so in the child labor tax case, since the enforcement of the act was enjoined before the measure was actually put into effect. In the McCray case[17] the Court contented itself with observing that the challenged levy "on its face" appeared to be a legitimate revenue measure. It seems doubtful whether the Court could safely make the actual raising of substantial revenue a controlling test of the validity of a tax, but clearly it is an evidential fact of importance and relevance. Mr. Justice McReynolds dissented in this case, on the ground that the restrictions imposed on sales of narcotics have no just relation to the collection of revenue.

In Blodgett v. Holden[18] the Court divided four to four on the question whether Congress can validly levy a retroactive gift tax. The Revenue Act of 1924[19] imposed such a tax upon gifts made during the calender year 1924, although the statute was not actually passed until June 24. Blodgett had made gifts amounting to more than $850,000 in January, before the gift tax provision in the Revenue Act had even been introduced in Congress. Justices McReynolds, Taft, Van Devanter, and Butler were of the opinion that the tax was "so arbitrary and capricious that its enforcement would amount to deprivation of property without due process of law." Mr. Justice McReynolds said: "It seems wholly unreasonable that one who, in entire good faith and without the slightest premonition of such consequence, made absolute disposition of his property by gifts should thereafter be required to pay a charge for so doing." Justices Holmes, Brandeis, Sanford, and Stone took the position that the act should be construed as applicable only to gifts made after its passage, and that the constitutional question need not be considered. In Untermyer v. Anderson,[20] the same provision was involved, with the difference

[17] 195 U. S. 27.
[18] 275 U. S. 142, and 276 U. S. 594.
[19] Act of June 2, 1924, 43 Stat. at L. 313.
[20] 276 U. S. 440.

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that Untermyer's gift was made while the gift tax bill was in conference committee and its passage reasonably assured. A majority here held the retroactive application void. Four dissenting justices, speaking through Justices Holmes and Brandeis, said again that the act should not be construed retroactively, and also urged that even if it were so construed it ought to be upheld.

II. JUDICIAL POWER

In Willing v. Chicago Auditorium Association[21] another unsuccessful attempt was made to establish the jurisdiction of a federal district court to render a declaratory judgment in a case involving diversity of citizenship. (See the earlier case of Liberty Warehouse Co. v. Grannis[22] decided at the 1926 term). The case presented the question of the right of the defendants under the terms of their lease to tear down a building on the leased premises and build another. After holding that the facts did not present a proper case for intervention by a court of equity, Mr. Justice McReynolds, by way of dictum, said: "What the plaintiff seeks is simply a declaratory judgment. To grant that relief is beyond the power conferred upon the federal judiciary. . . . . The proceeding is not a case or controversy within the meaning of Article 3 of the Constitution." Mr. Justice Stone, in a separate opinion, agreed with the result, but added: "But it is unnecessary, and I am therefore not prepared, to go further and say anything in support of the view that Congress may not constitutionally confer on the federal courts jurisdiction to render declaratory judgments in cases where that form of judgment would be an appropriate remedy, or that this Court is without constitutional power to review such judgments of state courts when they involve a federal question." He added that there was no case or controversy before the Court requiring an opinion as to the validity of declaratory judgments, and that the "determination now made seems to be very similar itself to a declaratory judgment to the effect that we could not constitutionally be authorized to give such judgments."

III. FEDERAL BILL OF RIGHTS

1. Search and Seizure

The enforcement of national prohibition continues to give rise to important and novel questions affecting the civil rights of individuals

[21] 277 U. S. 274.
[22] 273 U. S. 70. See comment in this *Review*, vol. 22, p. 85.

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whose illicit business brings them into contact with federal agents. In Olmstead v. United States[23] the Court faced the problem: Does the tapping of telephone wires by prohibition agents, itself a misdemeanor under state law, constitute an unreasonable search and seizure under the Fourth Amendment, so that the use of evidence so obtained would amount to compulsory self-incrimination forbidden by the Fifth Amendment? The evidence in the case showed a colossal conspiracy of rum-runners and bootleggers involving numerous employees, two seagoing vessels and several coast wise craft, underground storage *cachés*, and elaborate offices. The yearly income amounted to over two million dollars. Federal prohibition officers had the telephone wires of the conspirators tapped in the basement of the building in which the offices of the accused were located. Over a period of some five months a record was kept of the telephone conversations of the defendants, comprising 775 typewritten pages. There was no other evidence against the conspirators; but that which was so obtained conclusively demonstrated their guilt. They objected to its use against them on the constitutional grounds stated above.

By a five-to-four vote, the Court held that the wire-tapping and the use of the evidence secured thereby did not violate any constitutional rights of the defendants. Chief Justice Taft spoke for the majority. He reviewed briefly the previous decisions of the Court dealing with search and seizure and the inadmissibility of evidence obtained by it. In the light of these decisions and a fair construction of the Fourth Amendment, is wire-tapping an unreasonable search and seizure? The answer is "no." "There was no searching. There was no seizure. The evidence was secured by the sense of hearing, and that only. There was no entry of the houses or offices of the defendants." The Court refuses to extend the meaning of the Fourth Amendment "to include telephone wires reaching to the whole world from the defendant's house or office." The protection accorded sealed letters in the mails creates no precedent for that here claimed. A letter is a paper, an effect, and is, furthermore, in the custody of the federal government, which forbids its being carried by any one else. No such protection has been accorded to telegraph or telephone messages. Since the wire-tapping does not amount to unreasonable search and seizure, the fact that the evidence was obtained by a method which was both unethical and an offense against state law does not render it inadmissible unless Congress by express legislation

[23] 277 U. S. 438.

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chooses to make it so. At common law, evidence is not inadmissible because illegally obtained. The courts have no discretion, without congressional sanction, to exclude evidence because unethically secured. "A standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore."

Justices Holmes, Brandeis, Butler, and Stone dissented. In his brief and pithy opinion, Mr. Justice Holmes confines himself to the point that the government cannot decently use evidence obtained by the crimes of its agents. There are no clear precedents to cover the case, and the Court must, therefore, "consider the objects of desire, both of which we cannot have, and make up our minds which to choose. It is desirable that criminals should be detected, and to that end that all available evidence should be used. It is also desirable that the government should not itself foster and pay for other crimes, when they are the means by which the evidence is obtained. . . . . We have to choose, and for my part I think it a less evil that some criminals should escape than that the government should play an ignoble part." He adds: "If the existing code does not permit district attorneys to have a hand in such dirty business, it does not permit the judge to allow such iniquities to succeed." The fact that wire-tapping is an offense against the state and not the federal government is immaterial. "I hardly think that the United States would appear to greater advantage when paying for an odious crime against state law than when inciting to the disregard of its own." Mr. Justice Brandeis elaborates this point of view still further. "Our government," he says, "is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." In addition, he takes issue with the majority on the quest on whether the Fourth Amendment was violated. That amendment should be liberally construed to afford protection commensurate with the invasions of privacy made possible by the advance

[24] Ex parte Jackson, 96 U. S. 727.

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of science and invention. There was actually an unreasonable search in this case. Mr. Justice Butler, in a separate opinion, dissents on this latter ground. The tapping of the wires and the listening in by the officers constituted, in his judgment, a search for evidence in violation of the Fourth Amendment.

In Gambino v. United States[25] New York State troopers arrested the defendants, searched the car in which they were, and found liquor which they turned over to the federal authorities, who used it as evidence to secure the defendants' conviction. No warrant was used by the troopers, and the evidence showed the search to have been made without probable cause. Was the evidence admissible against the defendants in a federal court? The Court held not. This is upon the ground that the state troopers, although not agents of the federal government, believed that they were required to aid in the enforcement of the Volstead Act; and the aid thus extended was utilized by the federal authorities. The subsequent federal prosecution was in fact a "ratification of the arrest, search, and seizure made by the troopers on behalf of the United States." The Court distinguishes this from the case of Burdeau v. McDowell[26] and other cases where evidence illegally secured by persons other than federal officers was held admissible, on the ground that in none of these cases was the illegal search and seizure made "solely for the purpose of aiding the United States in the enforcement of its laws." Since the conviction rested wholly upon evidence secured by the invasion of the defendant's constitutional rights, it must be set aside. The Court referred to the memorandum by Governor Smith issued upon his approval of the repeal of the New York enforcement act in 1924 in which he declared that all peace officers, thus including state troopers, are required to aid in the enforcement of the federal law "with as much force and vigor as they would enforce any state law or local ordinance," and that the repeal of the Mullen-Gage [Enforcement] Act would make no difference in their actions except that offenders must now be taken before a federal court for prosecution.[27] This statement received wide publicity and has caused much controversy. The Court observes merely that

[25] 275 U. S. 310.

[26] 256 U. S. 465.

[27] Memorandum filed with Assembly Bill, Introductory No. 1614, printed No. 1817, p. 2. See also Messages of Jan. 2, 1924, N. Y. Legis. Doc. 147th Sess. 1924, No. 3, p. 40, and Jan. 7, 1925, N. Y. Legis. Doc. 148th Sess. 1925, No. 3, pp. 39, 40; Report of the Dept. of State Police for 1924, N. Y. Legis. Doc. 148th Sess. 1925, No. 50, p. 13.

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"whether the laws of the state actually imposed upon the troopers the duty of aiding the federal officials in the enforcement of the National Prohibition Act, we have no occasion to inquire." It seems clear from the present case, however, that if state peace officers are to be of real service to the federal government in supplying it with illegally obtained evidence, they must conceal their amiably helpful intentions and appear to be acting wholly on their own responsibility.

In Marron v. United States[28] federal agents entered under a search warrant authorizing the search of the premises and seizure of liquor and articles for its manufacture. They found the sale of liquor actively going on, arrested a person apparently in charge and conducting the business, and in the course of their search seized a ledger and various other incriminating documents in a closet. These were used as evidence against the accused, over his protest. The Court finds that the seizure of the ledger and bills is not authorized by the warrant, which under the Fourth Amendment must specify the things to be seized. However, when the arrest was made a crime was actually being committed, and as an incident to that arrest the officers could properly search the place to find things used in aid of the criminal enterprise. The ledger and documents were used indirectly, at least, as part of the general equipment of the saloon and the unlawful business carried on there. The search and seizure were therefore justified, and the evidence obtained was admissible.

In 1917 Congress passed a law[29] prohibiting the manufacture, sale, and *possession* of intoxicating liquor in Alaska, and allowing search warrants to issue for the entry of private dwellings upon probable cause to discover violations of the law. The Volstead Act[30] limits the use of search warrants and forbids their use against private dwellings unless liquor is being sold, or unless the building is also used as a store, shop, saloon, etc. It also plainly declares that the possession of liquor in one's home is lawful. In United States v. Berkeness[31] the Court holds that the Volstead Act overrides the conflicting provisions of the act of 1917 and is applicable to Alaska. Consequently, evidence obtained by searching a private dwelling under a warrant not alleging the sale of liquor is inadmissible.

[28] 275 U. S. 192.
[29] Act of Feb. 14, 1917, 39 Stat. at L. 903.
[30] Act of Oct. 28, 1919, 41 Stat. at L. 307.
[31] 275 U. S. 149.

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2. Due Process of Law

In Casey v. United States[32] an attack was made on the section of the Anti-narcotic Act[33] which provides that the absence of the required stamp from any of the drugs "shall be prima facie evidence of a violation of this section by the person in whose possession the same may be found." The creation of this presumption, it was alleged, amounts to a denial of due process. The provision was held valid by the Court, with four justices dissenting. Mr. Justice Holmes, speaking for the majority, said there is no want of due process in throwing upon accused persons "the burden of proving facts peculiarly within their knowledge and hidden from discovery by the government." In the case of poison which is not commonly used "except upon a doctor's prescription easily proved, or for a debauch only possible by a breach of the law, it seems reasonable to call on a person possessing it in a form that warrants suspicion to show that he obtained it in a mode permitted by the law." He reiterates what is said in the Nigro case[34] as to the general validity of the act and says that it is too late to overthrow it on the strength of the child labor tax case.[35] Mr. Justice Brandeis dissents on the ground that in this case the government instigated the crime of which the accused was convicted. Justices McReynolds and Butler both emphasize their belief that there is no rational connection between the fact proved, i.e., the possession of unstamped drugs, and the ultimate fact presumed, i.e., the unlawful acquisition of them.

IV. TERRITORIES

Springer v. Philippine Islands[36] is of interest largely because it affords the Court an opportunity to reaffirm its views on the doctrine of the separation of powers elaborated in the Myers case.[37] The case arose on the question whether the Philippine legislature could validly deprive the governor-general of the power to vote the stock of certain government-owned corporations and confer it upon a committee of which certain members of the legislature shall be ex officio members. Originally, this power was vested in the governor-general alone.

[32] 276 U. S. 413.

[33] Act of Dec. 17, 1914, 38 Stat. at L. 785, as amended by Act of Feb. 24, 1919, 40 Stat. at L. 1057.

[34] *Supra*, note 7.

[35] 259 U. S. 20.

[36] 277 U. S. 189.

[37] 272 U. S. 52. See comment in this *Review*, vol. 22, p. 70.

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The Court holds that the doctrine of separation of powers is implicit in the Organic Act[38] under which the islands are governed. In sections 21 and 22 of that act it is provided "that the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands" . . . . "that all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General." It is clear, says the Court, that the function of voting corporation stock is not legislative, and even more clear that it is not judicial. It is therefore logical to conclude that it is executive in character. It cannot, therefore, be delegated to legislative officers under the existing Organic Act. The fact that the territorial statute here under review was not disallowed by Congress does not support the inference that Congress impliedly sanctioned this exception to the doctrine of the separation of powers. Justices Holmes, Brandeis, and McReynolds, who dissented in the Myers case, also fail to agree with the majority in the present case. Mr. Justice Holmes reviews the many cases in which various governmental powers, or admixtures of them, have been delegated to boards and commissions. Congress, for instance, "has established the Interstate Commerce Commission, which does legislative, judicial, and executive acts, only softened by a *quasi*." The control of the Smithsonian Institution affords an almost exact parallel to the statute in the present case. He does not believe that the doctrine of the separation of powers requires, in practical application, the strict and rigid construction adopted by the majority. Mr. Justice McReynolds thinks that the act may possibly be void, but believes that the opinion of the majority goes far beyond the necessities of the case.

V. STATUTORY CONSTRUCTION

Prior to 1916, federal district courts exercised without statutory authorization a form of probation either by suspending sentence or by placing offenders under state probation officers. In Ex parte United States[39] this procedure was held void. The parole laws and presidential pardon were felt to be inadequate to the situation, because the former can be invoked only after the defendant has served at least one-third of his full sentence and the latter naturally can be

[38] Act of Aug. 29, 1916, 39 Stat. at L. 545.
[39] 242 U. S. 27.

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used only in special cases brought to the President's attention. Congress, accordingly, enacted in 1925 a probation law.[40] In United States v. Murray and Cook v. United States[41] the Court is asked by the circuit court of appeals to rule on the question whether this probation can be extended after the offender has begun to serve his sentence. Murray had served one day of his, and Dr. Cook, of North Pole fame, had served some three years. The Court admitted that it was possible to construe the act as permitting probation at any time after conviction, but held that it could more reasonably be held to mean that probation could be extended only before the serving of the sentence, thus making it the equivalent of a suspension of sentence. This would afford a type of clemency not now provided for by law, and would avoid overlapping the powers of pardon and parole.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. Due Process of Law

a. *The Police Power.* It is a matter of first-rate importance to the agricultural interests of the country that the Supreme Court has sustained the validity of the state laws authorizing coöperative marketing associations. Such laws exist in forty-two states. The Kentucky act, which is typical of the others, was upheld in Liberty Warehouse Co. v. Burley Tobacco Growers Coöperative Marketing Association.[42] The statute authorized the incorporation of non-profit coöperative associations for the "orderly marketing of agricultural products." Only producers may be members, and the association may contract only with them for marketing. These contracts are declared to be legal. It is made a misdemeanor to induce a breach of a marketing contract, and warehouse-men are made liable in damages to the association for encouraging or permitting the delivery of goods in violation of a marketing contract. One Kielman joined the tobacco growers, coöperative association and signed the regular contract. He delivered 2,000 pounds of tobacco to the warehouse company, which sold it with full knowledge of the circumstances, having previously been requested by the association not to sell. The warehouse, upon being sued, attacked the validity of the statute on four grounds: (1) that

[40] Act of Mar. 4, 1925, 43 Stat. at L. 1259.
[41] 275 U. S. 347. The two cases were merged.
[42] 276 U. S. 71.

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the association is an unlawful combination in restraint of trade; (2) that it abridges the privileges and immunities of citizens of the United States; (3) that it so impairs liberty of contract as to deny due process of law; and (4) that it denies the equal protection of the laws.

The first objection is thrown out by the Court as raising no federal question. The second is dismissed because corporations are not citizens within the meaning of the privileges and immunities clause. The last objection is overruled on the ground that warehouses are treated the same as others by law and no arbitrary classification can be made out. This leaves the question of due process for consideration. Speaking for a unanimous Court, Mr. Justice McReynolds observes that it is unnecessary to determine whether the liberty of contract protected by the Fourteenth Amendment "includes the right to induce a breach of contract between others for the aggrandizement of the intermeddler—to violate the nice sense of right which honorable traders ought to observe." Forty-two states have laws of this type, and Congress in several statutes has expressly recognized their propriety and utility.[43] Of all the state courts which have considered their validity, only that of Minnesota has found such a statute unconstitutional.[44] After a survey of the many favorable state decisions, the opinion concludes that the act definitely promotes the public interest, that protection to the fundamental contracts is essential to the success of the plan, that some discrimination intended to encourage agriculture has been recognized in previous decisions as valid, and that the states may properly legislate to meet definitely threatened evils. "Liberty of contract," guaranteed by the Constitution, concludes Mr. Justice McReynolds, "is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest."

In Nectow v. Cambridge[45] the Court makes plain that the general doctrine laid down in Euclid v. Ambler Realty Co.[46] to the effect that municipal zoning ordinances are valid under the Fourteenth Amendment is not to be given sweeping and indiscriminate application. The Cambridge zoning ordinance was roughly similar to that in the

[43] Clayton Act, October 15, 1914, 38 Stat. at L. 730; Capper-Volstead Act, February 18, 1922, 42 Stat. at L. 388; Coöperative Marketing Act of 1926, 44 Stat. at L. 802.

[44] Minn. Wheat Growers Coöp. Marketing Assoc. v. Radke, 163 Minn. 403, 204 N. W. 314, 1925.

[45] 277 U. S. 183.

[46] 272 U. S. 365. See comment in this *Review*, vol. 22, p. 94.

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Euclid case. Conceded to be valid in its general scope, it was attacked in its specific application to the plaintiff's property. A master was appointed to review the facts. He found that the plot in question lay between a residence and a commercial section of the city. By the ordinance it was placed in the restricted residence class from which manufacturing and mercantile establishments were excluded. Furthermore, by a projected street opening it was so reduced in size that it was wholly worthless for residence purposes. Before the zoning the owner had a contract for the sale of the plot for $63,000. The master found that the inclusion of the plot in the restricted zone would not promote the public health, safety, and convenience, and was not necessary for the accomplishment of the general plan. Accepting the facts, the Court, speaking through Mr. Justice Sutherland, who wrote the opinion in the Euclid case, holds that the action of the zoning authorities is an arbitrary invasion of the plaintiff's rights amounting to a denial of due process of law. The decision should have the wholesome effect of charging municipal authorities with responsibility not only with respect to the broad purposes and objects of a zoning scheme but also with regard to the reasonable and equitable application of that scheme in its details.

In Miller v. Schoene[47] the Court upheld the Virginia Cedar Rust Act which makes it unlawful to maintain red cedars which are the "host plants" of "cedar rust" within a certain radius of apple orchards, and provides that upon the request of ten reputable freeholders the proper authorities shall investigate the existence of the menace and abate it if found. It is not a denial of due process to protect the state's preponderant interest in its apple crop by sacrificing the lesser interest in cedar trees. A choice is necessary, since by doing nothing the apple crop is sacrificed. There is no delegation of power to the ten freeholders, like that which was proscribed in Eubank v. Richmond,[48] because their request does not govern the action of the state entomologist but merely sets in motion an investigation.

There is no want of due process of law in extending the liability of the employer under the Utah workmen's compensation act to an injury received by a workman while crossing a railroad track on his way to work. The track was immediately adjacent to the plant; there was no other means of access; no protection was extended by the employer save a warning to be careful. The fact that the injured

[47] 276 U. S. 272.
[48] 226 U. S. 137.

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workman was a trespasser did not affect the master's liability when he had steadily consented to the trespass. This is the case of Bountiful Brick Co. v. Giles.[49]

b. *Businesses Affected with a Public Interest.* The business of an employment agency is not so affected with a public interest as to enable the state to regulate the charges made for its services, although it may be subjected to license and reasonable police regulation. This is held in Ribnik v. McBride.[50] The majority opinion, written by Mr. Justice Sutherland, applies to employment agencies the test of public interest which the Court has attempted to work out in Charles Wolff Packing Co. v. Court of Industrial Relations[51] and Tyson and Bros. v. Banton,[52] and finds that they do not possess the characteristics necessary to support the rate-fixing power. The business is essentially that of a broker and does not differ substantially from the business of a real estate broker, merchandise broker, or ticket broker. In order to support the power to fix rates, there must exist in the business or the circumstances surrounding it conditions which "justify an indulgence of the legal fiction of a grant by the owner to the public of an interest in its use." The evils urged in connection with the business constitute grounds for police regulation but not price control. Mr. Justice Stone dissents in a long opinion in which Justices Holmes and Brandeis concur. He insists that to say that a business is "affected with a public interest" is to use a term not found in the Constitution and incapable of precise and technical definition. It is broadly a quality attaching to any business "whenever any combination of circumstances seriously curtails the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole." He adds: "I cannot accept as valid the distinction on which the opinion of the majority seems to me necessarily to depend, that, granted constitutional power to regulate, there is any controlling difference between reasonable regulation of price, if appropriate to the evil to be remedied, and other forms of appropriate regulation which curtail liberty of contract or the use and enjoyment of property."

[49] 276 U. S. 154.
[50] 277 U. S. 350.
[51] 262 U. S. 522. See comment in this *Review*, vol. 18, p. 67.
[52] 273 U. S. 418. See comment in this *Review*, vol. 22, p. 92.

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In Washington ex rel. Stimson Lumber Co. v. Kuykendall[53] the relator had a contract with a towboat company for the hauling of logs at a special price. The company, by reason of the nature of its business, was a common carrier. There is no denial of due process to the relator by an order of the proper state authorities prescribing a higher rate than that specified in the contract and ordering its collection.

Under a Missouri statute the superintendent of insurance is authorized to establish rates on fire, lightning, hail, and windstorm insurance which shall limit the aggregate collections of all the companies "to not more than a reasonable profit." He is not empowered to deal with individual companies or groups of companies. He ordered a ten per cent reduction in all insurance rates covered by the act. The 156 companies in the state attacked the order as confiscatory, since the aggregate return under the new rate will not be enough to yield a reasonable income to all companies engaged in the business. In Aetna Insurance Co. v. Hyde[54] the Court refused to intervene, since it was not alleged by any one company that the rate was confiscatory as to its business. To invoke the Fourteenth Amendment, there must be made out a specific showing of confiscation. No company which is receiving adequate returns can complain on behalf of another which is not.

c. *State Taxation and Eminent Domain.* In Saltonstall v. Saltonstall[55] it is held that no denial of due process is effected by a state statute which taxes the right of succession of the beneficiaries under a deed of trust to the property of a donor when the trust was established prior to the passage of the taxing statute, but when the right to alter the trust remained with the donor until his death, which occurred after the passage of the act. The donor reserved the right to change the gift after the act was passed. The privilege of succession has not been fully exercised and therefore remains taxable. This distinguishes the case from Nichols v. Coolidge,[56] in which the federal inheritance tax was held inapplicable to a bequest made before its enactment.

Blodgett v. Silberman[57] presents the question whether a Connecticut inheritance tax may validly reach bequests made by a resident of

[53] 275 U. S. 207.
[54] 275 U. S. 440.
[55] 276 U. S. 260.
[56] 274 U. S. 531. See comment in this *Review*, vol. 22, p. 81.
[57] 277 U. S. 1.

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that state in the form of a partnership interest in a business located in New York and of government bonds kept in New York. It will be recalled that in Frick v. Pennsylvania[58] the Court held that the transfer of tangible property located in another state could not be taxed by the state of domicile. An attempt is here made to have that rule applied to the taxable interests mentioned above. This the Court refuses to do. Instead, it applies the common law maxim, *mobilia sequuntur personam*, which, it says, is so firmly established in federal jurisprudence that it must be accepted "whether it approve itself to legal philosophic test or not." It finds that the partnership interest is merely a chose in action, a right to an accounting, and therefore intangible personal property, or "mobilia" within the meaning of the rule. Federal bonds also are choses in action, mere evidences of debt. Accordingly, the transfer of both of the properties in question was properly taxable by the state in which the owner lived.

A municipal corporation cannot, in the purported exercise of its police power, require a railroad company to allow the use of a part of its property as a public hackstand without the payment of compensation. The land in question, a driveway, had never been dedicated to the public by the company. The railroad is not compelled to allow all taxicabs or their drivers on its premises because it allows some. There can be no serious question as to the right of the city to acquire the rights here claimed, but it cannot take them without paying for them. This is the case of Delaware, L. & W. R. R. Co. v. Morristown.[59]

d. *Procedure—Civil and Criminal.* At the last term of Court it was held in Hess v. Pawloski[60] that a state may validly make the use of its highways by a non-resident the equivalent of appointing a state officer an agent on whom process may be served in actions for damages arising out of accidents. In Wuchter v. Pizzutti[61] the further question is presented whether a New Jersey statute of this type is wanting in due process because it does not impose on the secretary of state, the officer designated to act as agent, a clear duty to communicate notice of service or process on the non-resident defendant who is being sued. It is held that due process does require a provision in the act making such communication necessary; otherwise, default judgments might

[58] 268 U. S. 473. See comment in this *Review*, vol. 20, p. 100.
[59] 276 U. S. 182.
[60] 274 U. S. 352. See comment in this *Review*, vol. 22, p. 102.
[61] 276 U. S. 13.

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be secured against such non-resident without his knowing that suit had been instituted. It is neither fair nor reasonable to impose on the non-resident driver the obligation to make constant inquiry of the secretary of state to learn whether someone has sued him.

There is no denial of due process in a statute which makes the directors of a bank liable to depositors for money lost by the receipt of deposits while the bank was known by the directors to be insolvent; which places upon them the duty of examining into the banks' affairs and knowing its condition; and which makes the failure of the bank after the receipt of such deposits prima facie evidence of knowledge of its condition and of assent to the receipt of the deposits. In the case of Ferry v. Ramsey[62] this liability was enforced against a director who had been ill for so long a time that actual knowledge of the affairs of the bank was quite impossible for him. Mr. Justice Holmes meets the argument based on this circumstance by pointing out that the state, had it so desired, could have made the directors liable to the depositors in every case, and that, had that been done, whoever accepted the office of director would have assumed that inescapable risk. Justices Sutherland, Butler, and Sanford dissent on the ground that there is no rational relation between the fact of insolvency and the fact presumed, namely, assent by the director to the deposit.

In Dugan v. State of Ohio[63] the Court holds that there is no denial of due process in allowing the mayor of a city to impose fines for violation of the state prohibition law when he receives a stated salary, merely because the salary is paid out of the general municipal fund into which the fines are paid. The case is clearly distinguished from that of Tumey v. Ohio[64] in which the municipal judge received a directly proportionate share of the fines which he imposed.

2. Equal Protection of the Laws

Under the authority of a provision of the constitution of Mississippi that "separate schools shall be maintained for children of the white and colored races," school officers excluded a Chinese child from the white school but permitted her attendance at a colored school. The girl's father sought a mandamus to compel her admission to the white school. This is the case of Gong Lum v. Rice.[65] The decision of the

[62] 277 U. S. 88.
[63] 277 U. S. 61.
[64] 273 U. S. 510.
[65] 275 U. S. 78.

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state supreme court upholding the right of exclusion was commented on in an earlier issue of this *Review*.[66] The Supreme Court affirms this decision. It is urged that there is no colored school in the district in which the child lives; but the Court says that there may be a colored school outside the district which she may conveniently attend, and that if that is not the case the petition should have so stated. In that event, a different question would have been raised which the Court does not now need to consider. There is no unreasonable discrimination involved in the exclusion. Laws providing for the separate education of white and colored children have been repeatedly upheld. These decisions do not rest upon any theory of racial inferiority or superiority, but upon the ground that separate schools are necessary and desirable to maintain wholesome social relations between the races. They constitute a legitimate exercise of the police power in support of public peace, good order, and convenience. This being so, it cannot be said that a Chinese child is denied the equal protection of the law by being classed with colored people rather than white people in the enjoyment of the equal educational facilities of the state. Certainly the state is not required, in order to keep Chinese pupils from the white schools, to establish separate schools for their exclusive use.[67]

II. CONTRACT CLAUSE

A Mississippi law authorized state revenue agents to investigate cases of unpaid taxes and bring suits for recovery. The agent received no fee or salary, but he did receive a commission of twenty per cent of the amounts collected. When he left office he was allowed to continue pending suits in the name of his successor, and he received the commission and paid all fees and expenses. In 1924 this law was so changed that thereafter suits thus carried over were handled by the new agent, who certified that he had investigated them, paid half of the expenses of finishing them, and received half of the commission. In Mississippi *ex rel* Robertson v. Miller[68] the plaintiff, before the law went into effect, started suits which were thus continued and which resulted in the collection of nearly ten thousand dollars. Under the new act he received only half the commission. He sues to recover the other half, alleging an impairment of the obligation of contract. The

[66] Vol. 22, p. 626.

[67] Louisville Gas and Elect. Co. v. Coleman, 277 U. S. 32, deals with classification in taxation under the equal protection of the laws clause.

[68] 276 U. S. 174.

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Court sustains his contention. It is clear that the contract clause does not limit the power of a state to alter the terms of its officers or their future compensation.[69] But when services are rendered by an officer under a law specifying his pay, an implied contract arises which is protected like any other contract. The retroactive application of the act of 1924 would deprive the plaintiff of part of what he had earned, and that would impair the obligation of the contract under which he became entitled to the commissions.

III. STATE POWER AFFECTING INTERSTATE COMMERCE

1. State Police Power and Interstate Commerce

An ordinance of South Bend, Indiana, prohibited the operation of motor busses on its streets unless licensed by the city. No distinction is made between busses doing interstate business, local business, and both types of business. In Sprout v. South Bend[70] this ordinance was attacked by the plaintiff as a violation of the commerce clause and as a denial of the equal protection of the laws. Sprout operated a bus between South Bend and a point in Michigan. The license fee on his bus would be $50. He was admittedly doing both local and interstate business, though mostly the latter. The Court holds the license requirement void as an interference with interstate commerce. It does not appear that the fee was imposed as an incident to a scheme of municipal police regulation, or that the proceeds were devoted to the upkeep of the highways and were no more than necessary for that purpose. The fee is, therefore, a burden on interstate commerce and void. The portion of the ordinance requiring licensed busses to carry liability insurance issued by a company authorized to do business in Indiana was held not a denial of equal protection of the law, although the Court found it unnecessary to answer the question whether it burdened interstate commerce, since the ordinance was void on other grounds.

In Hemphill v. Orloff[71] a Massachusetts trust organized to deal in negotiable paper is held to be not engaged in interstate commerce. This being true, it may be denied the right to carry on business in another state without complying fully with local requirements as to registration and the securing of a certificate of permission to do business. Such a trust is not a citizen within the privileges and immunities

[69] Butler v. Pennsylvania. 10 How. 402.
[70] 277 U. S. 163.
[71] 277 U. S. 537.

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clause of the Fourteenth Amendment. The trust had failed to comply with the Michigan law in securing formal permission to do business, and was therefore not permitted to recover on a promissory note executed to its order in Michigan. The Court found no denial of due process of law in this.

2. State Taxation and Interstate Commerce

In Gulf Fisheries Co. v. MacInerney[72] an attempt is made to invoke the protection of the original package rule against a state tax imposed upon fish sold in the state. The law required a license to engage in the wholesale fish and game business and imposed a tax of one dollar for each thousand pounds of fish sold. The fish are caught in the Gulf of Mexico and landed on the wharf, and are then weighed, iced, and re-iced. Some seventy-five per cent are beheaded and gutted. Most of them are repacked in barrels for shipping. Some are sold to retailers in the city. All fish sold are thus handled. The Court holds that this is not a tax on imports nor on interstate commerce. "None is in an original package, and little in its original form. . . . . All the fish sold have, after landing and before paying the tax, been so acted upon as to become part of the common property of the state. They have lost their distinctive character as imports and have become taxable by the state."

In Interstate Busses Corp. v. Blodgett[73] the Court upholds the validity of a Massachusetts tax of one cent per mile of highway traversed by any vehicle used in interstate commerce as an excise on the use of the highway. The proceeds of the tax are used for road maintenance. The mileage tax is not imposed on cars engaged in intrastate commerce, but they pay a three per cent gross receipts tax less certain deductions. The Court finds that the tax is not an unreasonable charge for the privilege of using the highway and may therefore be sustained under the doctrine of Hendrick v. Maryland[74] and Clark v. Poor.[75] It does not appear that the mileage tax is a disproportionate one when compared with the local gross receipts tax, and consequently the plaintiff's claim of discrimination based on the difference between the two taxes is not well founded.

[72] 276 U. S. 123.
[73] 276 U. S. 245.
[74] 235 U. S. 610.
[75] 274 U. S. 554. See comment in this *Review*, vol. 22, p. 105.

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IV. STATE TAXATION OF FEDERAL AGENCIES

Wisconsin imposed on all insurance companies doing business in the state an annual license fee in the form of a three per cent tax on gross income from all sources except income from rents on real estate upon which taxes are paid, and except premiums collected on policies of insurance and contracts for annuities. This fee is in lieu of all other taxes except those on real estate owned by the corporation. In Northwestern Mutual Life Insurance Co. v. Wisconsin[76] the plaintiff seeks to recover excess taxes paid under protest during a five-year period, the disputed levy being the three per cent tax on the company's income from United States bonds. The Court holds the tax invalid as to this income. It is well established that "where the principal is absolutely immune no valid tax can be laid upon income arising therefrom." Mr. Justice McReynolds, speaking for the Court, emphasizes the distinction between such a tax as this and some of the state taxes affecting interstate commerce which have been sustained. "It is important to observe," says he, "that although a state statute may properly impose a charge which materially affects interstate commerce without so unreasonably burdening it as to become a regulation within the meaning of the Constitution, no state can lay any charge on bonds of the United States." The tax here amounts to an imposition on the bonds themselves and is therefore void.

A much more dubious result is reached in the case of Panhandle Oil Co. v. Mississippi.[77] Here a state statute imposed on the vendors of gasoline an excise tax of one cent per gallon, later increased to three cents, and then four. The plaintiff protested the payment of this tax on gasoline sold by it to the United States for the use of its Coast Guard Fleet in service in the Gulf of Mexico and its Veterans' Hospital at Gulfport. The Court, by a five to four vote, held that these sales could not be taxed. The majority takes the view that such a levy is a burden on a transaction by which the United States secures its necessary supplies and that it is, in effect, a tax on the United States for the support of the state. The opinion of Mr. Justice Butler is in general terms and does not make clear just how the tax produces the adverse and burdensome results imputed to it. Mr. Justice Holmes dissents in a vigorous opinion, a portion of which merits quotation. He says: "It seems to me that the state court was right [in upholding the tax.] I should say plainly right, but for the effect of certain dicta

[76] 275 U. S. 136.

[77] 277 U. S. 218.

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of Chief Justice Marshall which culminated in or rather were founded upon his often quoted proposition that the power to tax is the power to destroy. In those days it was not recognized as it is today that most of the distinctions of the law are distinctions of degree. If the states had any power it was assumed that they had all power, and that the necessary alternative was to deny it altogether. But this Court, which so often has defeated the attempt to tax in certain ways, can defeat an attempt to discriminate or otherwise go too far without wholly abolishing the power to tax. The power to tax is not the power to destroy while this Court sits. The power to fix rates is the power to destroy if unlimited, but this Court, while it endeavors to prevent confiscation, does not prevent the fixing of rates. A tax is not an unconstitutional regulation in every case where an absolute prohibition of sales would be one." He goes on to express the opinion that there is no reason why the federal government should not contribute in the same measure as other purchasers for the privileges it enjoys. The government has not protested in any way against the payment of the tax. "I am not aware that the President, the members of Congress, the Judiciary, or, to come nearer to the case in hand, the Coast Guard or the officials of the Veterans' Hospital, because they are instrumentalities of government and cannot function naked and unfed, hitherto have been held entitled to have their bills for food and clothing cut down so far as their butchers and tailors have been taxed on their sales." The whole question is one of degree, and the interference here seems too remote. Justices Brandeis and Stone concur in this opinion. Mr. Justice McReynolds dissents separately, urging that not everyone who sells a gallon of gasoline to the federal government becomes a federal instrumentality and therefore immune from state taxation.

In Long v. Rockwood[78] the Court again divided five to four in holding that a state may not levy an income tax on royalties derived by a citizen from the use of a patent issued to him by the federal government. In this case Mr. Justice McReynolds speaks for the Court. He says: "The power to exclude others granted by the United States to the patentee subserves a definite purpose—to promote the progress of science and useful arts. The patent is the instrument by which that end is to be accomplished. . . . . And the settled doctrine is that such instrumentalities may not be taxed by the states." Mr. Justice Holmes again dissents, with Justices Brandeis, Sutherland,

[78] 277 U. S. 142.

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and Stone concurring. He observes that a patent is obviously not an instrumentality of the federal government, but is used by the patentee for his private advantage alone. "Patents would be valueless to their owner without the organized societies constituted by the states, and the question is why patents should not contribute as other property does to maintaining that without which they would be of little use." The mere fact that a franchise comes from the federal government is no more reason for exempting it from state taxation "than is the derivation of the title to a lot of land from the same source."

In the case of Shaw v. Gibson-Zahniser Oil Corp.[79] the defendants are assignees of a departmental oil and gas lease of land belonging to a full-blooded Creek Indian. The land was purchased for him by his guardians while a minor, and the purchase price came from the departmental lease of his restricted allotted lands. It is held that the interest of the lessee in these lands is not such as to make them immune from state taxation as federal instrumentalities in the absence of an express exemption created by statute. The Court observes: "There are some instrumentalities which, though Congress may protect them from state taxation, will nevertheless be subject to that taxation unless Congress speaks." There is no basis here for implying congressional intention to create such exemption.

[79] 276 U. S. 575.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING

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State Constitutional Development Through Amendment in 1927. Among a group of seven states which made changes in their fundamental law in 1927, only two, Oregon and California, lie west of the Mississippi River in the newer section of the country. The greatest number of changes in the framework and operation of government are found in New York. Many of the amendments apply to bonded indebtedness and other matters of extreme detail which so crowd American state constitutions, requiring constant alteration to provide for economic, social, and political development.

For convenience in associating the changes with constitutional provisions previously in force, they are herein treated by states rather than by subject matter. Also, the effect of the amendment upon the earlier section of the constitution is indicated where it is not apparent from the nature of the amendment.

South Carolina achieved the record in volume for 1927, adopting twenty-eight amendments, practically all of which were for the purpose of increasing the limit of the bonded indebtedness of specified political subdivisions of the state. Five of the twenty-eight, however, related to school districts, exemptions from county taxes, and excluding the Tugaloo River from the eminent domain provision of Art. XIV., Sect. 1.[1] These amendments were submitted to the voters on November 2, 1926, but they did not become effective until 1927, since the constitution of South Carolina requires further submission to the General Assembly after approval by the electorate. This practice is not usual among the states, in most of which the voters have the final voice. The General Assembly of 1927 approved the amendments, whereupon they were appended to the fundamental law.

For the second time in two years, New York considered a long list of amendments. On November 3, 1925, the elective officers of the state were reduced by amendment to four—governor, lieutenant-governor, comptroller, and attorney-general—and authority was

[1] A statement of the votes cast for each amendment will be found in *Report of the Secretary of State of South Carolina for the Fiscal Year 1926*, Pt. II., pp. 76-102.

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given to consolidate the executive departments. On November 8, 1927, eight alterations of the constitution were effected, of the nine proposed. The unacceptable proposal increased the terms of office of elective state officers and of state senators from two years to four years.[2] Governor Smith and the Democratic organization led the attack on this plan, basing their objection upon the selection of 1928 as the beginning of the new terms. Governor Smith favored an amendment of similar purpose placing the election of the above-named officers and senators in off-years instead of in presidential years, so as to accentuate state and local issues. The amendments which were approved require the governor to submit a budget to the legislature;[3] exclude all water debts of a city when ascertaining the power of the city to become otherwise indebted, thereby permitting New York City in particular to borrow up to $300,000,000 for the construction and for equipment of new rapid transit facilities;[4] permit the legislature to relieve cities and counties of the full 50 per cent share of the cost of eliminating grade crossings, whenever desirable;[5] increase the salary of the governor from $10,000 to $25,000, of the lieutenant-governor from $5,000 to $10,000, and of each member of the legislature from $1,500 to $2,500;[6] make the governor the formal head of the executive department of the state government, correcting an oversight in the reorganization plan of 1925;[7] authorize the construction of a state highway to the top of Whiteface Mountain;[8] permit counties, under legislative authorization, to acquire surplus property by condemnation in constructing parks, public places, and highways to form suitable building sites abutting such constructions, with the privilege of future sale or lease if desired;[9] and prevent the annexation of territory by a city without the consent of the residents of the territory, given by a majority vote on a referendum taken for that purpose.[10]

Virginia authorized the exemption of wives and widows of veterans of the Civil War from the payment of the state poll tax as a prerequisite to the right to register or vote;[11] changed the appropriation year of the state to coincide with the fiscal year;[12] and allowed counties having a population greater than five hundred per square mile to impose taxes or assessments upon abutting landowners for local public improvements.[13] These amendments were approved by the voters November 8, 1927.

[2] Yes, 578,863; No, 1,256,157.
[3] Yes, 1,291,990; No, 446,107.
[4] Yes, 961,632; No, 799,867
[5] Yes, 1,339,332; No, 397,205.
[6] Yes, 1,073,802; No, 683,999.
[7] Yes, 1,197,931; No, 488,095.
[8] Yes, 1,082,864; No, 602,395.
[9] Yes, 1,035,441; No, 533,705.
[10] Yes, 1,144,872; No, 527,388.
[11] Yes, 53,046; No, 17,930.
[12] Yes, 36,235; No, 28,411.
[13] Yes, 44,214; No, 19,799.

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On September 20, 1927, the people of New Jersey registered their approval of a proposal to enable the legislature to enact general laws under which the municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts, and regulating therein, buildings and structures, according to their construction and the nature and extent of their use.[14]

Michigan joined the ranks of those states permitting the incorporation, by two or more cities, villages, or townships, of metropolitan districts comprising territory within their limits, for the purpose of exercising the usual municipal functions.[15]

Wisconsin added one amendment to the state constitution at the April election, introducing for purposes of taxation such classifications as to forests and minerals, including or separate or severed from the land, as the legislature shall prescribe.[16] In November, 1926, the salary of the governor was fixed at $5,000 and recall of elective public officers was approved by the electorate.

In the newer section of the country, Oregon at a special election of June 28, 1927, acted favorably upon three changes of its fundamental law. The provision denying suffrage to negroes, Chinese, and mulattoes was repealed.[17] Persons appearing before circuit judges and waiving indictment for the commission of crimes or misdemeanors may be charged therewith on information filed by the district attorney.[18] Registration becomes a necessary qualification for voting.[19]

Of twenty-three proposals under consideration in California, fifteen were approved at the general election of November 2, 1926. Art. XIII of the constitution was extended to authorize taxes of $4\frac{1}{2}$ and 5 per cent of the gross receipts of common carriers on the public highways. These taxes are divided equally between the state and the counties for highway maintenance. No other levies are made upon the carriers, and the legislature is empowered to change the percentages.[20] Sect. 14 of Art. XIII is amended to tax short-line steam railroads, not over 250 miles in length, at the same rate as electric railroads, i.e., $5\frac{1}{4}$ per cent of gross receipts, unless this classification is held to violate the national Constitution, in which event all steam railroads shall be taxed at the rate of 7 per cent of gross receipts.[21] A bond issue of $8,500,000 is authorized for the erection (or com-

[14] Yes, 293,155; No, 85,918.
[15] Yes, 210,880; No, 200,490.
[16] Yes, 179,217; No, 141,888.
[17] Yes, 69,373; No, 41,877.
[18] Yes, 64,956; No, 38,774.
[19] Yes, 55,802; No, 49,682.
[20] Yes, 751,379; No, 211,618.
[21] Yes, 643,993; No, 263,104.

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pletion) and equipment of state and state university buildings.[22] California has resorted to fractions in her constitution, as evidenced by the amendment of Sec. 1¼ of Art. XIII to exempt from taxation property in the possession of disabled veterans, widows and widowed mothers of such veterans, the ladies of the Grand Army of the Republic, and the California Soldiers' Widows Home Association.[23] Also, cemeteries and other places used for the permanent deposit of the human dead are exempted from taxation and local assessment.[24]

Absentee voting is liberalized by extending its benefits to qualified voters occasionally but not regularly required to travel, upon affidavit of expectation to be absent from their respective precincts, or who are engaged in the civil or congressional (as well as the military or naval) service of the United States or of the state. The same privilege is provided for those who are unable to go to the polls because of injury or disability.[25] Any increase of stock or bonded indebtedness of a corporation must be approved by the holders of at least two-thirds of the amount in value of the stock, instead of by a majority. It is no longer necessary, however, to give sixty days' public notice of a meeting to be called for that purpose.[26] It is now possible, through legislative action, to segregate school districts with like interests into classes as changing conditions warrant.[27] Whenever two or more propositions for indebtedness by political subdivisions are submitted to the voters at the same election, the votes for and against each shall be counted separately. A two-thirds vote is necessary for adoption.[28] Forest trees, for forty years after planting or after the removal of the original timber, are exempt from taxation, in any effort to encourage reforestation.[29]

Non-partisan candidates, including judges, may be elected at the primary upon receiving a majority of votes cast thereat. Where two or more candidates are to be elected to an office, and more candidates receive a majority than are to be elected, those securing the highest number of votes of those receiving such majority, equaling the number of candidates to be elected, shall be declared elected.[30]

The makers of California's constitution wisely limited yearly government expenditures to yearly income. This limitation is more drastic than its makers intended it to be, because it develops a "dry

[22] Yes, 650,282; No, 311,619.
[23] Yes, 482,525; No, 468,643.
[24] Yes, 540,367; No, 292,134.
[25] Yes, 550,676; No, 308,061.
[26] Yes, 427,086; No, 345,394.
[27] Yes, 455,088; No, 344,103.
[28] Yes, 391,614; No, 352,137.
[29] Yes, 619,062; No, 276,473.
[30] Yes, 595,413; No, 210,915.

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season," so called, each year, extending from July first, the beginning of the fiscal year, to the first Monday in December, the end of the period for paying the first half of taxes. During this interval, when some of the county funds are depleted, warrants have to be registered until money is available and interest has to be paid upon them. It can readily be seen that the interest thus paid is loss to the county. Accordingly, the city or county treasurer is required, upon resolution of the governing body of a political subdivision, to transfer, temporarily, funds not exceeding 85 per cent of the taxes accruing thereto, to meet obligations promptly without incurring interest charges. The money thus transferred is to be replaced from the first tax money received.[31]

Sect. $4\frac{3}{4}$ of Art. VI is altered to allow the legislature to confer upon appellate courts, in cases where jury trial is not a matter of right or is waived, the power to ascertain facts from evidence and to make findings of fact contrary or additional to those made by a trial court.[32] Coördination of judicial business is provided for by the creation of a judicial council of eleven judges, under the chairmanship of the chief justice, to regulate court procedure and practice and to assign, through the chief justice, judges to congested calendars or to vacant posts until such are filled by temporary appointment or election.[33] Legislative reapportionment is prescribed immediately following each federal census, the 1928 legislature to redivide the state on the basis of the 1920 census. A reapportionment commission, consisting of the lieutenant-governor, attorney-general, surveyor-general, secretary of state, and superintendent of public instruction, is to function if the legislature fails to act.[34]

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State Public Utilities Legislation in 1927. State regulation of public utilities is one of the major experiments of present-day government. The American states, attempting to escape public ownership on the one hand and the laissez-faire attitude on the other, have almost unanimously adopted the expedient of creating a new agency—the public utility commission. The objective urged in justification of the creation of such an agency is the "ideal of special knowledge, flexibility, disinterestedness, and sound judgment in applying broad

[31] Yes, 387,905; No, 351,785.
[32] Yes, 521,858; No, 230,284.
[33] Yes, 468,750; No, 256,252.
[34] Yes, 437,003; No, 363,208.

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legislative principles that are essential to the protection of the community, and of every useful activity affected, to the intricate situations created by expanding enterprise."[1]

Establishing the exact nature of the public utility commission, and clearly defining its powers and duties by legislation, is the first problem in the field of effective state regulation of public utilities. The second problem is that of securing and retaining a personnel in the public utility commission and its staff which possesses the high qualifications demanded by the importance of the service. The third problem is concerned with establishing satisfactory rules as a basis for rate-making. Rate control is the heart of the whole matter of effective regulation. The fourth problem is how to establish effective co-operation between the states and the federal government, and among the states themselves.

During 1927, the legislatures of thirty-five states enacted either new public utilities laws or amendments to existing public utilities legislation. The significant legislation in this field may be considered in relation to the four major problems indicated above. The powers and duties of the public utility commissions were either more clearly defined or increased and extended by legislation in some twenty-nine states. Among these, thirteen enacted measures applying to the regulation of motor vehicles carrying persons or property for compensation on the public highways.[2]

The important features of such motor vehicle regulations are: (1) Permits must be obtained from the public utilities commission before motor vehicles may be used on public highways to transport persons or property for hire. The commission is usually instructed to grant the application for such permit only when circumstances "justify the issuing of a certificate of convenience and necessity therefor."[3] Such a policy is intended not only to protect the public in the use of the highways, but especially to protect the existing transportation agencies from what the commission considers to be uneconomical or unjust competition. (2) The commission, furthermore, is frequently granted

[1] Charles E. Hughes, "Some Aspects of the Development of American Law," *New York Bar Assoc. Report, 1916*, p. 270.

[2] Alabama, Arizona, California, Connecticut, Missouri, New Jersey, North Dakota, Rhode Island, South Carolina, Utah, Washington, West Virginia, Wyoming.

[3] Utah, *Laws*, 1927, Ch. 42. See also Arizona, *Laws*, 1927, Chap. 62; California, *Statutes and Amendments to the Code*, 1927, Chap. 64; Connecticut, *Public Acts*, 1927, Chap. 203; West Virginia, *Acts*, 1927, Chap. 49.

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the authority "to provide for the supervision, inspection, and regulation . . . ., in the public interest, of the operation of motor carriers, and of their services, rules, regulations and practices, fares, rates, charges and facilities, franchises and licenses."[4]

Several states designated enterprises and industries hitherto considered private as being "affected with a public interest," and extended to such the regulatory authority of the public utilities commission. For example, the Arizona legislature declared the storage of cotton or wool for hire to be a public utility subject to rate-fixing.[5] Minnesota extended the law relating to inspection of wheat and other grain to the several kinds of grass seeds, and delegated the necessary regulatory powers to the railway and warehouse commission.[6] North Dakota added to the duties of the board of railroad commissioners that of regulating grain and seed warehouses, and authorized the board to be appointed as trustees for insolvent grain warehousemen.[7] Oregon placed under the jurisdiction of the public service commission corporations "organized to build dams, booms, drive and catch logs and timber products therein."[8] While the legislature of Kansas vested the administration of the workmen's compensation act in the state public service commission.[9]

Additional powers of regulation and control over existing public utilities were entrusted to the commissions in at least fifteen states. Since the major portion of such legislation relates to minor details or to powers commonly granted to commissions in other states, only those additions which mark a significant tendency or a new departure will be mentioned. California provided that the important utilities (named in the act) must obtain from the railroad commission "certificates of public convenience and necessity" before beginning new construction.[10] A somewhat similar law in Maryland provided that gas and electric corporations must obtain approval of the commission before beginning new construction.[11]

[4] Alabama, *General Laws*, 1927, No. 336. See also Arkansas, *Acts*, 1927, Act 99; Missouri, *Laws*, 1927, p. 402; Utah, *Laws*, 1927, Chap. 42; Washington, *Session Laws*, 1927, Chap. 166; West Virginia, *Acts*, 1927, Chap. 49; Wyoming, *Session Laws*, 1927, Chap. 98.

[5] Arizona, *Laws*, 1927, Chap. 79.

[6] Minnesota, *Laws*, 1927, Chap. 334.

[7] North Dakota, *Laws*, 1927, Chaps. 155, 156.

[8] Oregon, *General Laws*, 1927, Chap. 455.

[9] Kansas, *Laws*, 1927, Chap. 232, Sect. 33.

[10] California, *Statutes and Amendments to the Code*, 1927, Chap. 129.

[11] Maryland, *Laws*, 1927, Chap. 338.

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The tendency to bring municipalities, in their operation of utilities, under the control of state commissions was furthered in a few instances. An act of the Maryland legislature authorizes the sale or disposal of municipally owned electric plants, or gas plants, only upon the approval of the public service commission. Such sale or disposal is further subject to the approval of a majority of the voters voting upon the question at an election, in case the requisite number of electors petition for such an election.[12] In this connection it is interesting to note a law of Oklahoma relating to the disposal of any important municipally owned public utility. Such disposal is authorized only after the approval of sixty per cent of the qualified voters of the municipality voting at an election called for such purpose.[13]

It is discouraging to be compelled to report that state legislatures in 1927, in most instances, showed no appreciation of the immediate necessity of furnishing adequate salaries for commissioners and technical assistants. No state as yet has been willing to appropriate the money sufficient to perform even the detailed technical work necessary for effective regulation.

The majority of the states in 1927 increased appropriations to an amount only barely sufficient to meet the added expenditures incurred for the new or extended services of the commission. A few states, however, did make a slight beginning toward providing for superior administration. For example, the salary of the secretary of the commission in Illinois was increased from $5,000 to $7,000.[14] The legislature of Maryland reëstablished the office of general counsel and appropriated fairly liberally for it.[15] The state of Ohio authorized the appointment of an executive secretary and the employment of additional experts by the commission.[16] The legislature of Virginia proposed a constitutional amendment for the consolidation of the several agencies having to do with utilities into one state corporation commission.[17]

It seems evident that the success of effective regulation depends to a marked degree upon the integrity, fearlessness, fairmindedness, and superior knowledge of the members of the public utility commission

[12] Maryland, *Laws*, 1927, Chap. 690.
[13] Oklahoma, *Session Laws*, 1927, Chap. 94.
[14] Illinois, *Laws*, 1927, p. 702; *Laws*, 1921, p. 706.
[15] Maryland, *Laws*, 1927, Chap. 201.
[16] Ohio, *General Laws*, 1927, p. 424.
[17] Virginia, *Acts*, Extra Session 1927, Chap. 32.

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and the technical staff. The utilities which are the subjects of regulation offer the highest rewards to men of the largest ability in law, engineering, accounting, and administration. Such utilities are able to draw into and retain in their employment the most successful men in their several fields. Until the public awakes to the realization that men possessing ability equal to that of men in the employment of the utilities must be drawn into the public service, and that no salary is high enough which fails to draw and retain the best talent, we shall continue to see the best public agents, after a few years of experience, drawn off into the service of the utilities, or men of mediocre ability alone filling the regulatory positions. Under such conditions, regulation is likely to be little more than a farce.

Next to securing a satisfactory personnel, the establishment of a satisfactory basis for rate-making is the most important problem in effective state regulation. Rate regulation, the heart of the whole matter of effective regulation, is still in a formative period, and unfortunately is still in a somewhat chaotic state. The controversy continues between the prudent investment theory on the one hand and the reproduction cost theory on the other. Few, if any, states have worked out a satisfactory method of making an initial valuation. Opinion and practices differ with regard to the weight that should be given to "going concern value." The problem of arriving at a "fair return" is awaiting the solution of what is a "fair value." A just classification of rates which protects against unjust preference in rates is, in most states, out of the question, with an overworked and undermanned commission and staff.

The most advanced steps (and practically the only ones) taken by legislatures in 1927 toward the solution of the rate-making problem were taken by the legislature of Indiana. The public service commission was instructed, in fixing rates, not to consider the compensation of officers and employees of public utilities when such compensation was found to be excessive.[18] A more noteworthy suggestion of the Indiana legislature for lifting the rate-making process out of chaos was offered in a joint resolution instructing the senators and representatives from Indiana in Congress to introduce and procure the enactment of a measure "declaring that the basis of all calculations as to rates to be charged by any public service corporation shall be, as nearly as can be ascertained, the honest and prudent investment in the property at present used and useful for the convenience of the public; and that

[18] Indiana, *Laws*, 1927, Chap. 146.

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the rates shall be such as shall provide such public service corporation a reasonable return upon such investment."[19] In order to carry out unhampered a policy of regulation considered by the legislature to be fair, reasonable, and just, the legislature of Indiana further petitioned Congress to enact legislation "limiting the jurisdiction of the courts of the United States in all cases that may be filed therein by public utilities seeking relief from orders issued by public service commissions to such utilities as have first exhausted all legal remedies given by the courts of the respective states."[20]

The development of holding companies controlling the operations of utilities extending over many states—such holding companies being largely free from state regulation—and the close connection between interstate rates and intrastate rates led several states in 1927 to enact legislation looking toward closer coöperation between commissions of the several states and between the state commission and the federal agencies. Such coöperation was sought by Maryland through an enactment giving the commission "full power and authority to make joint investigations, hold joint hearings, and issue joint or concurrent orders in conjunction with any official board or commission of any state or of the United States, whether . . . . the commission shall function under agreements or compacts between states, or under concurrent powers of states to regulate interstate commerce, or as an agency of the federal government, or otherwise."[21]

A law of Minnesota authorizes the state commission to coöperate with the Interstate Commerce Commission for the purpose of harmonizing state and federal regulation of common carriers with specific instructions to approve freight rates "which depart from the distance principle now required by state law, to the extent necessary in its judgment to harmonize state and interstate rates. . . . ." The act also authorizes the state commission to conduct joint hearings with the Interstate Commerce Commission.[22]

The legislature of Maine authorized the public utilities commission, with the consent of the governor and council, to hold joint hearings with the Interstate Commerce Commission "with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of the public utilities commission and the Interstate

[19] Indiana, *Laws*, 1927, Chap. 270.
[20] *Ibid.*, Chap. 269.
[21] Maryland, *Laws*, 1927, Chap. 196.
[22] Minnesota, *Laws*, 1927, Chap. 405.

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Commerce Commission."[23] New Jersey prepared for future state-federal coöperation by authorizing the board of public utilities commissioners "to exercise any power or authority over interstate commerce" within the state of New Jersey whenever, and in case, such control is authorized by an act of Congress. Coöperation was also provided for, in authorized cases, with boards of other states and with the Interstate Commerce Commission.[24]

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Recent Personnel Legislation. Without question, the most significant personnel legislation in the United States in the past year has been the passage of the so-called Welch Act amending the salary schedules contained in the Personnel Classification Act of 1923, which were applicable to some forty or forty-five thousand positions in the District of Columbia; making these rates applicable to some 135,000 positions outside the District of Columbia; and again directing the Personnel Classification Board to make the survey of more than a hundred thousand positions outside the District of Columbia which was ordered in the Personnel Classification Act of 1923, but which the Board has persistently refused to make.

The Welch Act was frankly labeled by its sponsors as emergency legislation intended to provide particularly for the low-paid workers in the federal service until such time as the survey ordered could be made and a report submitted to Congress. At the hearings on the bill it was brought out clearly that the data justifying any salary increase were so fragmentary as to be practically worthless; moreover, it was not even mentioned that in the District of Columbia, at any rate, the 45,000 employees affected by the act constitute what is probably the highest paid large group of miscellaneous workers in the world, with both sexes fairly equally represented. Under the act, the lowest salary provided for college graduates without experience performing "under immediate supervision, simple and elementary work requiring professional, scientific, or technical training as herein specified but little or no experience" is $2,000. No differentiation at all is made as to the kind of professional or scientific work. For clerical workers performing under supervision "the simplest routine office work," the beginning rate is $1,260; beginning stenographers with no experience,

[23] Maine, *Laws*, 1927, Chap. 188.

[24] New Jersey, *Laws*, 1927, Chap. 85.

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and only such training as is represented by graduation from a business high school or commercial business college start at $1,440. The highest salaries specifically mentioned in the act are $9,000, but still higher are authorized. In the lower grades, employees in the District of Columbia generally received an immediate increase of $60 to $120 a year; while, owing to the wording of the act, in the higher grades the increases generally were larger, amounting in a considerable number of cases to $500, $1,000, or even $2,500, a year.

This result is strictly in accordance with the wording of the act, but it occasioned considerable unfavorable criticism in the early days of December when Congress met. The higher salaries, which, as has been stated, were meant to be made mandatory, became effective last July 1. No appropriations for paying the increased salaries were made during the last session of Congress, but it was understood that the departments were to make the increases, were to pay the larger amounts from the current appropriations, and were to ask for deficiency appropriations at the session of Congress beginning in December, 1928. Some twenty million dollars is being asked for that purpose, and an equal amount was included in the estimates submitted by the Bureau of the Budget for the fiscal year beginning July 1, 1929.

The hasty character of the legislation is indicated not only by the lack of data on which to base any legislation but also by several other provisions in the act. For example, department heads are directed so to administer the act that the employees affected "shall retain . . . . the same relative position or positions within their respective grades as they hold at the time the act goes into effect." For nearly all the grades under the old law there were seven rates of pay, while under the new act there are often only four, five, or six grades. Obviously, retaining the same relative position on a four, five, or six rung ladder that obtained under a seven rung ladder was impossible. The difficulty was solved temporarily by a ruling of the Comptroller-General containing a mathematical formula which pleased nobody greatly. For employees outside the District of Columbia, department heads were directed to base their rates upon a classification into services and grades which had not been made at the time the act took effect, and which cannot be made except as a result of the survey now in process.

The survey directed by the act is in many respects the most important provision, notwithstanding the mandatory salary increases of twenty million dollars. A duties classification for some 135,000 positions is directed, and also a study as to proper rates of compen-

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sation. The Personnel Classification Board, evidently taking heed of the unfavorable criticism heaped upon it for its failure to carry out the mandate in the classification act of 1923, has been prosecuting the directed study through the summer and fall, though without any great amount of vigor. At the rate of progress, it was impossible to present any complete report at the present session of Congress, and therefore an interim report only, according to press reports, is to be made. It seems improbable, at the rate the Board is working and with the staff it has, for it to complete the report required by the Welch Act before July 1, or possibly even October 1, 1929.

There has been other federal personnel legislation of lesser significance. Because of the confused and overlapping system of personnel administration in the federal service, with a score or more of federal agencies having a finger in the personnel pie, every Congress is asked to enact numerous measures giving relief to this, that, or the other group actually or allegedly in need of it. As to compensation matters, for example, bills were passed giving the customs employees higher salaries; giving additional compensation for employees in the postal service who do night work; and making more liberal the sick leave provisions for postal employees. The act providing for the taking of the sixteenth decennial census in 1930 contained no provision for the scientific classification and compensation of some ten thousand temporary positions, or for the selection of their incumbents in accordance with advanced personnel practices. Many other bills failed of enactment, including one liberalizing the federal retirement system so as to increase the maximum annuity from $720 to $1,000 and making the optional retirement age lower.

Representatives of organizations interested in personnel administration in the federal service have been giving considerable thought to a better organization of the federal government personnel system and have practically agreed that the only solution is the establishment of a department of administration, with a political secretary, a non-political under-secretary, and four non-political directors heading, respectively, bureaus of the budget, personnel administration, *matériel*, and special investigations concerned with structure and operating efficiency. A proposed measure providing such a federal department of administration has been largely agreed upon by some dozen national organizations, some with a deep technical interest in personnel administration and in efficiency in government, and others with a broader interest but having greater lobbying strength. The measure will be

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pushed vigorously at the next regular or special session of Congress.

Personnel legislation in the States. At the session of the California legislature in 1927, the form of the state civil service commission was changed. Originally the commission consisted of one commissioner and two associates, with the former giving full time to the work and the latter only a small fraction of their time (taken up mostly with quasi-legislative and quasi-judicial functions). In 1925 the form was changed so as to provide for a single commissioner. In 1927 the original form was restored. This change was due to dissatisfaction not so much with the single-member civil service commission as with the manner in which the legislation was enacted; through an alleged error, the wrong bills were engrossed and signed by the presiding officer in both houses and by the governor. It seems probable that legislation will be introduced in the 1929 session placing the central personnel work in a new division of the department of finance, but retaining the civil service commission to exercise quasi-legislative and quasi-judicial functions.

In Colorado a determined attempt is being made to rescind that portion of the constitution which provides for the merit system in the state service. The constitutional provision contains almost as much detail as many statutes. The petition required for a vote on a repeal of a provision of the constitution was submitted last August, but the secretary of state ruled that many of the names were improperly affixed. The matter was taken to the courts, and the lower court upheld the ruling of the secretary of state. The appeal to the supreme court could not be decided in time to permit the matter to be brought to a vote in November.

In the last session of the New Jersey legislature a bill was introduced to abolish the state civil service commission with five members, and to substitute instead a single member. By the terms of the measure Charles P.Messick, who for a number of years has been chief examiner and secretary of the New Jersey commission, was named as the commissioner for a term of five years at a salary of $10,000. The bill was not passed, but instead a commission to investigate the operations of the civil service commisson was named; and later the proposal was so changed as to give the commission power to investigate all state departments. The commission selected Senator Chase as chairman. During the summer it investigated alleged election irregularities and never got to the civil service commission. It is reported that at the current session of the legislature an effort is to be made to change

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the civil service law so as to deprive the civil service commissioners of pay.

County and Municipal Personnel Legislation. At the last session of the Michigan legislature a bill was passed providing for a county civil service commission to administer personnel matters in Wayne county, in which Detroit is located. The legality of the act was attacked in the courts. The lower court has upheld the act, but an appeal has been taken to the state supreme court, where it is still pending. In the meantime, no attempt has been made to give effect to the provisions of the act.

The central employment system established for Alameda county, in which Oakland is located, has successfully weathered the first storms, including attacks in the courts and the machinations of some department heads to break down the system through ineffective methods of administration. The Alameda county civil service commission has worked out a system of rules, has developed a duties classification, has taken steps to standardize salaries, has done a large amount of good testing work, and has otherwise begun to function in the manner intended by the sponsors of the act.

An interesting situation has arisen in Duluth, where the rules of the civil service commission put into effect by the city council provide for a system of service (efficiency) ratings. The commission is without funds to employ even a full-time secretary, and consequently has never carried out this provision of the rules. When an attempt was made to promote several patrolmen to sergeant without taking account of the service ratings which are required by the rules, but which are not available, the action was attacked with success in the courts, and the civil service commission was enjoined from making the promotions. There appear to be two ways out—to change the rules or to provide sufficient funds to employ a staff requisite to carry them out.

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State Forestry Legislation, 1927-28. Notwithstanding the fact that comparatively few of the state legislatures held sessions during the past year, considerable advance was made in forestry legislation. Certain of the states materially strengthened their existing laws in various ways.

Rhode Island authorized the bureau of forestry to purchase and re-sell tree seedlings at cost to private owners within the state. It

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also amended its forest fire protection law in certain respects. Appointments of forest wardens are required to be approved by the chief of the bureau of forestry, who is also given authority to purchase, when appropriation has been made therefor, such special forest fire equipment and supplies as in his judgment may be necessary in the more heavily wooded areas of the state; and the legislature is authorized to appropriate annually such funds as may be needed therefor. Other changes require town treasurers to transmit copies of all fire-fighting expense accounts to the chief of the bureau of forestry within a specified limit of time (forty-five days from the date of the fire) for approval and transmission to the state auditor; and town forest wardens are required, in the case of all fires that burn over more than one acre of land, to make report thereon to the chief of the bureau of forestry within two weeks. Failure on the part of either a town treasurer or a town forest warden to comply with these requirements causes the town to forfeit reimbursement by the state of its share of the costs involved. The state commissioner of agriculture is empowered to make such rules and regulations as he may deem helpful in the matter of preventing and suppressing forest fires; and the chief of the bureau of forestry is given authority to call the town and district forest wardens together, from time to time, for conference and instruction as to methods of forest fire suppression. By a further change, the provision forbidding the setting of fire in the open air from the first of March to the first of December, without written permission of the town forest warden or the district forest warden, has been expanded to require, during the months of April and May, in addition to such permit, the personal supervision of the town forest warden or the district forest warden, at the expense of the permittee. An additional amendment authorizes the organization, by town forest wardens, of special emergency corps to aid in the suppression of forest fires.

Massachusetts made provision for forest fire patrol in certain towns in Barnstable county, and also provided a penalty for the violation of rules and regulations relating to hunting and fishing in certain of the state forests. New Jersey extended its forest fire protection laws to include salt marshes or meadows. New York increased the maximum pay of fire-wardens and fire-fighters to fifty and thirty-five cents, respectively, per hour; empowered the conservation department to enter into coöperative agreements with municipalities and persons for fire control work; and authorized villages to ac-

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quire and use lands for forestry purposes. It also broadened the general powers of the department by authorizing it, in addition to its forest preserve powers and duties, to establish and manage other state parks and parkways in the forest preserve counties, and in the counties of Albany, Jefferson, Montgomery, Schenectady, and Schoharie, and to acquire lands for such purposes when moneys have been appropriated therefor.

Wisconsin changed its single-headed conservation commission to one of six members, with power to employ a conservation director, and revised and expanded the commission's general powers and duties for the protection, development, and use of forests. It also increased its authorization for the acquirement of lands for national forests, from 100,000 to 500,000 acres, and required approval by the county boards of the general boundaries of the areas selected.

Kentucky made provision for the distribution of moneys accruing to the state from national forest reserves—the amounts, in each instance, to be apportioned to the several counties in proportion to the reserve area located in each county, with the provision that the "forest reserve fund" so created be placed to the credit of the public schools and public roads by the respective magisterial districts in which the lands are located.

Alabama passed a progressive measure which made it the duty of the state commission of forestry to ascertain and make due record of the location and character of all lands to which the state holds the legal title (either for itself or as trustee), and all state parks and lands belonging to any institution or department of the state, or to any township or the inhabitants thereof; and to make similar investigation in the case of such other lands as the state or any institution thereof is entitled to which have not been set aside for the state or the institution, and to take immediate action to acquire the same for the state or institution. The lands belonging to the various ownerships are required to be classified as "used" or "unused" (the term "unused" applying broadly to lands not utilized for the immediate purposes of any institution or department), and it is also required that the record shall show whether the lands are valuable chiefly for agriculture, mining, timber culture, or any other purposes, and the uses to which they are being put. The commission, subject to any and all accrued rights to the lands in question, and acting as technical adviser to the state or other claimant to the land, is given jurisdiction over and control of all said state parks and unused lands so long

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as they remain such, and is required to protect them and to recommend from time to time, to the governor, or to the department or institution to which the use of the lands is devoted, such policy as it deems desirable in regard thereto. Power is also given the commission in connection with these lands to make exchange of scattered tracts, when advisable in order to effect concentration of ownership. As regards all unused lands owned absolutely by the state, the commission is required to determine which of them are best suited to forest culture, and to list them accordingly in the office of the state auditor. Thereafter, at the direction of the governor, the lands so listed are required to be administered by the commission either as state forests, for purposes of forest culture, or as state parks, for state park purposes.

Somewhat similar legislation was enacted by West Virginia, which created a state forest and parks commission (composed of the governor, the commissioner of agriculture, the director of agricultural extension, the state geologist, and the chairman of the game and fish commission) to investigate lands held by the state, including those purchased for or forfeited to the state for non-payment of taxes, with a view to determining the following points: the availability of the lands as state forests or parks; how the state may best coöperate with the federal government in furthering the plans of the federal forestry service for the Monongahela National Forest, including Seneca Rocks and other sections in the proposed purchase area; the usefulness and availability as state parks of various other specified areas, including ways and means of acquiring and administering the same; and such other matters pertaining to forests and parks as the commission shall deem advisable. The commission is required to make a comprehensive report to the legislature at its next session, covering the results of this investigation, and to accompany the report with such bills as may be necessary to carry out its recommendations.

Two states, Wisconsin and New York, enacted specially noteworthy legislation upon which to base broad, far-reaching policies for the encouragement of the growing of timber. Wisconsin passed an act putting the recently adopted amendment to its constitution into operation by changing the method of taxing lands devoted to growing timber, so that the land is now subject to a specific annual tax, paid to the town treasurer, and with the state advancing fifty per cent of the amount. The timber on the land remains free from taxation until it has matured, when a severance tax is paid to the state. This

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"forest crop" act, taken in connection with the other forestry measures mentioned above, rounds out a fine record of progressive forestry legislation in that state.

New York, in like manner, took steps toward laying an adequate foundation for the state's proposed program of reforestation upon an extended scale. As an initial move in that direction, a resolution had been introduced at the previous session proposing an amendment to the state constitution with a view to authorizing a bond issue totalling, in a period of twenty years, $100,000,000, to provide means for the acqiusition and reforestation of lands. While no action upon the resolution was taken at that session, the matter was followed up at the last session by the enactment of a law creating a temporary commission to investigate generally the subject of reforestation, with special reference to ascertaining the location, value, and area of lands in the state not suitable for agriculture, which might be utilized for reforestation, and to report the best means of promoting and financing such work. The commission is required to submit a report by the first of March, 1929, accompanied with bills embodying such proposed legislation as may be deemed necessary to carry its recommendations into effect; and $50,000 is made available for the investigation. In other words, legislative authority has been secured for taking preliminary steps toward determining the best means of both promoting and financing the proposed undertaking. This marks a stride forward in the past year, the effect of which, in view of the extended scale upon which this work is planned, will doubtless be felt far beyond the confines of the state.

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NOTES ON RURAL LOCAL GOVERNMENT

EDITED BY THOMAS H. REED

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City-County Consolidation in Allegheny County, Pennsylvania. The adoption by the people of the state of Pennsylvania of a constitutional amendment authorizing the formation of a consolidated city and county government embracing the whole of Allegheny county is perhaps the outstanding event of the year in rural, as it is in urban, local government. The county of Allegheny includes, besides the city of Pittsburgh and three other cities, sixty-six boroughs and fifty-two townships. The area of the county is 740 square miles, approximately half of which is devoted to agriculture.

The constitutional amendment adopted in November provides that the consolidated city and county government, which is to bear the name of City of Pittsburgh, is to have the powers of the county government as it has previously existed plus certain powers of a municipal character. The amendment is to be carried out by means of a charter in which these additional powers must be specified. At this writing (December) the charter is in process of preparation, and no one can yet say with certainty what it will contain; but the municipal powers in addition to the ordinary powers of a county government the inclusion of which in the charter has been most frequently suggested are those relating to charities, health, through highways, parks and recreation, and planning.

There is also in the amendment a provision authorizing the charter to provide for the creation of special districts for the purpose of carrying on practically any work, utility, or service of interest to the people of these districts. The only limitation upon this power is that the districts must be made up from more than one city, borough, or township.

All other powers hitherto possessed by the local government units within the county are to remain in their present hands. The amendment, indeed, goes so far as to guarantee the continued existence of each of these units with its present name and its present boundaries, unless it voluntarily votes to ally itself with another unit.

The adoption of the forthcoming charter will put an end to a long conflict between the desire of Pittsburgh to expand and the desire of

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the outside communities to retain their independence. The idea of this federated municipality really originated with the League of Boroughs and Townships, which had for years been fighting the extension of Pittsburgh by annexation. While the amendment was adopted by a very slender majority in the state as a whole, it carried in Allegheny county by a vote of more than two to one. The distribution of this vote is interesting as indicating the attitude of the urban and rural parts of the county toward the amendment:

	Yes	*No*
Pittsburgh	81,818	21,542
Third class cities		
Clairton	575	797
Duquesne	767	996
McKeesport	1,040	7,968
Total	2,382	9,761
Boroughs	49,279	21,830
Townships	16,329	11,230

The strongest opposition to the plan was found in the third class cities. In fact, the opposition was localized in McKeesport and vicinity. The other two third class cities are located nearby. The neighboring boroughs and townships also recorded majorities against the measure. The townships, on the whole, showed themselves less favorable to the amendment than the boroughs, but much more favorable than the third class cities. In thirty-six of the boroughs the majority was better than two to one. A similarly favorable result was achieved in only sixteen of the townships. Such an outcome was to be expected; the surprising thing is that the townships should, as a whole, have reported a majority for the amendment.

In fact, however, the scheme of federated consolidation has many points to commend it. First of all, there is its feasibility. Granted that there are problems in such a metropolitan community as Allegheny county which demand common solution, the easiest—in fact, the only practical—method of getting such a consolidation is by assuring the individual units their continued existence. Any plan of out and out annexation would, in Allegheny county at least, meet furious opposition. If such a plan had been forced through by legis-

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lative fiat, the scars of the conflict would not have healed in a generation.

In the second place, the federated plan is financially advantageous. It means that the central budget is to be charged with the cost of only those services which need to be centralized, while the cost of all other services is borne locally. It has been the uniform experience of cities making extensive annexations that the annexed territory has immediately demanded the extension of all forms of municipal services for its benefit. It is obvious that such extensions would be impossible over any such area as that of Allegheny county. In case of out and out annexation, the same thing would have happened there that has happened elsewhere: city improvements would have been doled out to the outlying districts by the well-known process of log-rolling. It is also true that in the event of out and out annexation the outlying communities lose control of their own taxing and bonding powers. Whatever they get from the city must be log-rolled from the city hall. Under the federated plan each community will have the benefit of its own resources for self-development. The rural communities need not pay city taxes for which they would receive no compensating improvements. On the other hand, the downtown taxpayers need not be bled white for the extension of city services to territories that do not need them. All in all, there is a great deal to be said for the wisdom in such circumstances of centralizing only those functions which actually need to be dealt with centrally. That this fundamental idea has been sold to the people of Allegheny county, the vote on the sixth of November amply testifies.

This is the first large-scale experiment in city-county consolidation, as contrasted with city-county separation, which has even come near to adoption, with the exception of the unsuccessful attempt in Alameda county, California, in 1922. There is a certain boldness in the proposal to combine urban and rural units in what may properly be called a regional government. The fact is, however, that the automobile and the paved highway, by making far places near, have outrun the imagination of legislators and political scientists. The community solidarity of such a region as Allegheny county was a fact long before it was recognized. The amendment of this year, with its prospective charter, is after all merely an attempt to bring the legal into conformity with the actual situation.

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The New Charter of Alameda County, California. Alameda county, California, presents a very interesting study in county government in the United States. It is as diversified in its area, its industries, and its various units of local government as any region on this continent. It comprises 468,000 acres of land on the continental side of San Francisco Bay. Of this territory, 224,171 acres are farming land whose products bring in a total yearly revenue of $20,000,000. Within the county, whose total population runs well over 600,000, are the urban communities of Oakland, Berkeley, Richmond, Alameda, Piedmont, Albany, Emeryville, Hayward, and San Leandro. The largest city is Oakland, with a present population of 350,000. It is also the county seat.

Within this area arises every type of governmental problem. Oakland and Berkeley are physically merged into a large metropolitan area; while separated from them by only a narrow estuary is the city of Alameda. From this massed urban population one may travel out into a country-side of large ranches of more than 10,000 acres unbroken since the days of the Spanish grants. From the level region skirting the bay and covered by the sea-mist one may push back to the hills of Piedmont well out of the fog belt and bathed in the clear California sunshine. The inner harbor at Oakland is the port for a foreign commerce which totals $54,000,000 annually. From the industrial plants fringing the water-front at Emeryville the county extends to the cherry groves at San Leandro which give promise of the richer Santa Clara farther south. This area is organized into a water district known as the Eastbay Municipal Utility District, which has authorized the sale of $39,000,000 worth of bonds to build pipe lines, tunnels, and reservoirs to bring a plentiful supply of water from the Sierras two hundred miles away.

The county has the problems of the university and the commuter. From this region on the eastern side of the bay 60,000 people commute daily by the swift ferries to San Francisco. At Berkeley is located the University of California, with 10,000 students present on its campus every winter, and creating those problems of public governance which have always accompanied universities since the Paris of the Middle Ages.

On January 18, 1927, Alameda filed a new charter with the secretary

[1] *Concurrent and Joint Resolutions and Constitutional Amendments*, Ch. 10, p. 2029. 47th Legislature, 1927.

[2] Constitution, Art. XI, Sect. 7½.

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of state at Sacramento.[1] This charter was framed by the citizens of the county in pursuance of authority granted by the state constitution to the counties of California to prepare charters.[2] According to this document, provision may be made for the election of a board of fifteen freeholders to frame a new charter whenever three-fifths of all the members of the board of supervisors deem it wise, or whenever fifteen per cent of those who voted for the last governor in the county sign a petition.

When the board of supervisors passes the ordinance calling for the election of the freeholders to prepare a new charter, the election takes place within a period of from twenty to sixty days. Within one hundred and twenty days after they are elected, the freeholders prepare the charter. This must be published at least ten times in a daily newspaper of general circulation printed, published, and circulated within the county.

From thirty to sixty days after the completion of this publication the charter election must be held. If a majority of voters voting thereon vote "yes," the charter shall be deemed to be ratified. Then it must be presented at the next session of the legislature for its approval or rejection as a whole, without power of alteration or amendment. Approval may be given by concurrent resolution; and if approved by a majority vote of the members elected to each house, such charter becomes the charter of the county and the organic law thereof relative to the matters therein provided.

Under the charter the elective county officers are the members of the board of supervisors, the auditor, assessor, district attorney, sheriff, superintendent of schools, and county treasurer. The appointive officers are the members of the board of education, members of the board of law library trustees, members of the civil service commission, the coroner, county clerk, fish and game warden, health officer, horticultural commissioner, license collector, livestock inspector, members of the probation committee, probation officer, public administrator, public defender, purchasing agent, recorder, surveyor, and tax-collector.

The chief governing body of the county is the board of supervisors. This consists of five members chosen by popular vote. Each member must be an elector of the district which he represents, must reside therein during his incumbency, must have been such an elector for at least one year immediately preceding his election, and must have been elected for such district. Here we have the unique California

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type of small board of supervisors elected by districts. In most of the counties of America where the board of supervisors is representative of particular districts it is quite large, and usually when there is a small board the members are elected at large.

The salary of each supervisor is $350 per month. In the event of a vacancy in the board, the governor appoints. The board elects its own chairman, who is merely *primus inter pares*. A quorum consists of a majority of the board.

The board is authorized to appoint all county officers other than elective officers and all officers, assistants, deputies, clerks, attachés, and employees whose appointment is not otherwise provided for by the charter. Except in the cases of appointees to the unclassified service, all appointments by the board must be made from the eligible civil service list. The board is authorized also to provide by ordinance for the compensation of elective and appointive officers, assistants, deputies, clerks, attachés, and employees unless such compensation is otherwise fixed by the charter.

The supervisors have authority to provide by ordinance for the number of justices of the peace and constables in each township. The board may also provide by ordinance for the number and fix the compensation of such other judges and officers of such inferior courts as are now, or may be hereafter, provided by the constitution or by general law. They can also create additional officers and boards and fix their salaries. The supervisors have power to provide, publish, and enforce a complete code of rules not inconsistent with general laws, or with the county charter, prescribing in detail the duties and the systems of office and institutional management, accounts, and reports for each of the offices, institutions, and departments of the county.

The board lets all county contracts. It also may create a county institutions commission, a welfare council, and a public health center, and provide for the appointment of the members thereof, to serve without compensation; fix their terms of office; prescribe their duties; and may consolidate any two or more of said commissions.

One progressive feature of the charter is that the supervisors, after actuarial investigation and by a four-fifths vote, may provide for the purchase of annuities or insurance for county employees, the basis of which, in whole or in part, must be contribution by the employees to be benefitted, provided that such ordinance shall be approved at a general election by two-thirds of the voters voting

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thereon. Whenever a vacancy occurs in an elective county office other than a member of the board of supervisors, the board appoints to the vacancy.

The board may provide for the formation of road districts for the care, maintenance, repair, and supervision of roads, highways, tunnels, viaducts, conduits, subways, and bridges. It may provide for the issuance and sale of bonds of county, district, and division for improvements, provided two-thirds of the qualified voters in the area approve, and provided that provision is made for an annual tax to pay the interest and to take care of the sinking fund.

In each township there are to be as many justices of the peace as are provided by general law, and not more than one constable for each justice's court, together with such clerks, deputy constables, and other officers as may be authorized by the board of supervisors; provided, however, that if the legislature substitutes some other system of inferior courts for the system of courts of justices of the peace now established, then, upon the establishment of such inferior courts, the office of constable in each township shall cease to exist.

One interesting and somewhat unusual feature of the charter is that the constables are appointed by the sheriff from the eligible civil service list. The compensation of justices of the peace of each township and of constables is fixed by the board of supervisors, and must be by salary only. Constables are ex-officio deputy sheriffs and are under the supervision and direction of the sheriff. Each constable is subject to the orders of the sheriff, must serve process within his township or elsewhere when requested, and must also perform all the duties required of him by law.

The charter further directs that, in addition to the powers and duties conferred upon district attorneys by the laws of the state, the district attorney shall be the attorney for the public administrator, and shall, in the matter of all estates which the public administrator has been appointed to administer, collect the attorney's fees allowed therein by law, and pay the same into the county treasury.

One of the most interesting things in the charter is its provision for the office of public defender. This official receives $4,000 per annum and is required to "devote all his time to the duties of his office and shall not engage in the practice of law except in the capacity of public defender."[3]

[3] *Statutes of California*, 47th Session, 1927, Chap. 871.

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The charter directs that "the public defender, upon request of the defendant, or upon order of the court, shall defend, without expense to him, all persons who are not financially able to employ counsel, and who are charged with the commission of any contempt, misdemeanor, felony, or other offense. He shall also, upon request, give counsel and advice to such persons, in and about any charge against them upon which he is conducting the defense, and he shall prosecute all appeals to a higher court or courts, of any person who has been convicted upon any such charge, where, in his opinion, such appeal will, or might reasonably be expected to, result in the reversal or modification of the judgment of conviction. He shall also, upon request, prosecute actions for the collection of wages and of other demands of persons who are not financially able to employ counsel, in cases in which the sum involved does not exceed one hundred dollars, and in which, in the judgment of the public defender, the claims urged are valid and enforceable in the courts. He shall also, upon request, defend such persons in all civil litigation in which, in his judgment, they are being persecuted or unjustly harassed. He shall also have the powers and perform the duties now or hereafter prescribed by general law."

Subject to such rules and regulations as are laid down by the board of supervisors, the county surveyor has direction and control over all construction, maintenance, and repair of roads, highways, tunnels, viaducts, conduits, subways, and bridges. He also has the control and management of all county rock quarries and gravel pits and all other materials, property, and instrumentalities in connection with construction work.

The county has a civil service system obviously copied after the civil service system at Washington. There is a commission of three members appointed by the board of supervisors for a term of six years. This commission chooses its own president. Each commissioner receives ten dollars for each meeting of the commission which he attends, provided there are not more than five meetings in any calendar month. The commission appoints a chief examiner and such other employees as it deems necessary.

The civil service of the county is divided into the unclassified and the classified service. The unclassified service includes: (1) all officers elected by the people, and their chief deputies; (2) all assistants, deputies, and other employees in the office of the district attorney; (3) not to exceed six confidential deputies in the office of the sheriff;

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(4) all appointive boards and commissions; (5) members of the county board of education; (6) law library trustees; (7) members of the civil service commission; and (8) all persons serving the county without compensation. The classified service comprises all positions not specifically included by the charter in the unclassified service except places requiring peculiar and exceptional qualifications of a scientific, professional, or expert character where competitive examinations are impracticable.

The civil service commission provides for the standardization and classification of all positions in the classified civil service. It prepares and holds open competitive examinations and provides for the successful candidates a period of probation of not more than six months. In the event of a vacancy, the appointing authority notifies the civil service commission, which certifies the three highest on the eligible list. A veteran receives five additional points to his rating. All civil service employees are required to avoid every form of political activity. One interesting provision of the charter is that "in the employment of persons in the service of the county, where sex does not actually disqualify, and where the quality and quantity of service is equal, there shall be no discrimination in selection or compensation on account of sex." Apparently the Californians accept Mr. Wilson's dictum that the eight-hour day has the sanction of the judgment of society, for they provide that "eight hours shall constitute a day's work for mechanics and others engaged in manual labor in the service of the county."

The charter provides for a thoroughgoing budget system. On or before the first Monday in July every department, officer, court, district, district board or commission is required to file with the auditor an estimate of expenses for the next fiscal year. On or before the first Monday in August the auditor transmits to the board of supervisors a budget containing an estimate of expenses for the current fiscal year and an estimate of revenue, exclusive of taxes upon property, and certain other necessary information. The board proceeds to the consideration of the budget at public hearings of which due notice has been given. On the first Tuesday in September the supervisors pass the annual appropriation ordinance, which takes effect immediately. No salary or compensation of any appointive officer or employee can be increased except by provision made in the annual appropriation ordinance.

The board of supervisors may appropriate a sum each year for

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urgent necessities; but no money can be paid out of this appropriation unless authorized by a four-fifths vote of the board. The charter directs the board to prepare a preliminary budget to cover all expenditures required between the first day of July in each year and the passage of the annual appropriation ordinance. All property in the county must be re-appraised by experts for purposes of assessment at least once in every five years.

In view of the number of municipalities contained within the county, the charter provides that "the board of supervisors and all county officers shall assume and discharge municipal functions of cities and towns within the county whenever requested to do so by such cities or towns, upon such terms as may be agreed upon between the county of Alameda and the city or town requesting the performance of such functions."

Any elective or appointive county or township officer may be recalled by the electors at any time after he has held his office six months. The petition must be signed by fifteen per cent of those who voted in the county for governor at the last election, and must contain a statement of the grounds on which the recall is sought. On receiving the petition, the county clerk submits it to the supervisors, who arrange for a special election not less than thirty-five days nor more than forty days thereafter. If a regular election is to occur within a period of thirty-five to sixty days, the recall election may be held then.

"Upon the sample ballot there shall be printed in not more than two hundred words the grounds set forth in the recall petition for demanding the recall of the officer, and upon the same ballot in not more than two hundred words the officer may justify himself. There shall be printed on the recall ballot as to every officer whose recall is to be voted on, the following question: 'Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?' Following which question shall be the words 'yes' and 'no' on separate lines, with a blank space at the right of each in which the voter shall by stamping a cross (X) indicate his vote for or against such recall. On such ballots under each question there shall also be printed, if the officer sought to be recalled be an elective officer, the names of those persons who shall have been nominated as candidates to succeed him in case he shall be recalled at such election, but no vote shall be counted for any candidate for said office unless the voter also voted on the question of the recall of the person sought to be recalled therefrom. The name of the person sought to be recalled shall

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not appear on the ballot as a candidate for the office." In the event that the incumbent is recalled, the highest candidate on the ballot gets the position. Before a petition of recall can be filed against a person in the classified service a complaint in writing must be made to the civil service commission.

The citizens of Alameda believe in patronizing one another, for the charter provides that preference shall be given to Alameda labor and to Alameda products in all contracts.

As time goes in America, Alameda is a comparatively new county. Age has not given it traditions like Fairfax county, Virginia, or Lancaster county, Pennsylvania. The glamour of great figures who have contributed to the nation's history does not contribute to its civic sense. However, it does have in a very real way a county consciousness similar to that of the old colonial counties of the Atlantic seaboard. It is in many ways a geographical unit, peopled by an essentially homogeneous population and blessed with a sense of its own great future. It is a favored region; and in a vigorous, intelligent, and progressive manner the county is making a great effort to solve the very real problems of local self-government.

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Recent Proposals for Reorganizing County Government in Virginia. The movement for reorganizing state government in Virginia is not new. Investigations have been made by legislative committees every biennium since 1911. However, the results of these investigations were so small that the General Assembly of 1926, on the recommendation of Governor Byrd, provided the necessary appropriation for a survey by experts, a method that has proved successful in several states. The New York Bureau of Municipal Research, on the invitation of Governor Byrd, made an intensive study of state and county government. The survey of county government is embodied in a separate report which covers one hundred pages of small type. It presents a splendid picture of the economic condition, and of the organization and procedure of the government, of the Virginia counties.

As to governmental organization, the survey shows that the Virginia counties have small boards of supervisors who are elected from magisterial districts. It is recommended by the Bureau that the magisterial districts be eliminated as far as possible, and that supervisors

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be elected at large. It is also suggested that the board devote itself to legislative functions. In other words, the present duties of the county board acting as supervisors for road work and poor relief might logically be transferred to the county administrator or county manager. It is reasonable to expect that the result of encouraging the counties to assume more legislative functions as to local affairs would be to get abler men on the board of supervisors, as well as to lessen the burden on the state legislature.

Each county, as the investigation shows, has between thirty and forty offices and boards. The Bureau recommends the abolition of several county offices and boards and a centralization of administrative authority in the hands of a responsible county administrator elected by the voters of the county, or a county manager appointed by the board of supervisors.

There is no need for maintaining the ancient office of coroner, at least in its present form. The office should be abolished, it is suggested, and the duties placed in the hands of the commonwealth's attorney, who might appoint a physician temporarily to perform the functions of coroner when there was occasion. It is recommended that the commonwealth's attorney be appointed by the governor, in order to remove him from the dilemma that he is often in as to whether he should harken to the mandate from the people who elected him or to the mandate which he receives from the laws of the state under which he brings prosecutions.

It is shown that there is dissatisfaction with justice as dispensed by the elected justices of the peace, and that there exists a general conclusion that the system has outlived its usefulness. It is suggested that the office may be rejuvenated by replacing the justices of the peace with trial justices appointed by the judges of the circuit courts. It is thought that the prestige of the latter would attach to the office and would tend to raise it from the low point that it now occupies in the esteem of the public.

The ancient office of constable, which is now filled by election from magisterial districts, should be abolished by giving the sheriff the power to appoint enough deputies to handle the duties of constables. The sheriff, the Bureau suggests, should be appointed and removed by the county administrator. He should also be separated from the county jail, from which he has been receiving the most lucrative part of his income. The jail might be administered as a public institution rather than as a commercial adjunct to the sheriff's office. By being

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placed on an adequate salary basis, the sheriff would be expected to become more efficient in making criminal investigations and arrests.

The county clerks should assume the duties of jury commissioners. It is recommended that expense and delay incident to summoning jurors could be avoided by requiring the county clerk to be present at different times at several convenient places in the county for the purpose of examining the qualifications of jurors.

Other county offices scheduled for abolition are the superintendent of the poor and the overseers of the poor. Under the proposed plan of organization, these duties would be taken over by the superintendent of welfare. The investigation shows that the office of county surveyor is superflous in Virginia. The county administrator should appoint a surveyor whenever there is a demand for such services. It is suggested that the functions of the examiner of records and of the inheritance tax commissioner, who are representatives of the state tax commission, could easily be carried out by the county commissioner of revenue. In the recent past, Virginia had as many commissioners of the revenue as there were magisterial districts. The legislature provided in 1926 that each county should have one commissioner.[1] This is a progressive step, but it should be carried further by providing for appointive assessors. The successful experience of other states, as is pointed out, is the strongest argument that the work of assessment can be improved by such a change. In Virginia the state tax commissioner should appoint the county commissioners of the revenue. There is need, as the survey of financial conditions in the state shows, for more centralized control.

One of the problems found by the survey is that of the poor county. There are as many as fourteen counties in which the primary local functions of roads, schools, and health cannot be carried out without substantial subsidies from the state. This problem might be solved, the Bureau suggests, by consolidating two or more adjacent counties under one government, or by creating administrative areas consisting of two or more counties in which county functions can be merged. The latter suggestion can be more easily realized, as county pride in the older counties of Virginia would not support the former. The creation of administrative areas by uniting two or more counties would make for the more efficient performance of such functions as health, public welfare, roads, and schools. Several counties have taken such

[1] *Acts of Assembly*, 1926, p. 462.

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steps in regard to poor relief, with marked success as to the institutional care of the poor.

Practical and valuable recommendations are made as to financing road work and the county schools. A single county road levy should take the place of district road levies. Special road funds should be discontinued and all expenditure for roads budgeted.

As a matter of practice, the county boards of supervisors have nothing to do with school finances. The school funds are under the control of the school board, which adopts the school budget and notifies the county board of the amount of tax levy required to meet it. The result is that Virginia counties have two governments, one for schools and one for other governmental purposes. Many able students of local government are not in sympathy with the contention that the schools are "*sui generis*, sometimes entirely unlike anything else in the range of governmental functions."[2] It is recommended by the Bureau that the division superintendent of schools prepare an estimate of the needs of the public schools, which should be submitted to the county manager and budgeted with the estimates for other county work.

A law passed by the General Assembly in 1926 requires the board of supervisors of each county to prepare a county budget.[3] The law has not been complied with. In fact, as the survey shows, it is impossible for the county clerk, the officer upon whom the duty of preparing the county budget would under the present organization devolve, to prepare a budget, since the accounting system now in use does not furnish the proper data. There is no uniform classification of expenditures and revenues that can be used in preparing budget estimates, and furthermore the fee system removes a large part of the county operating expenses from the control of a local budget. The Bureau recommended that each county should have a local accounting officer, who might properly be designated controller; or the county clerk might act as controller. In the event that the county clerk assumes these duties, his fiscal function of collecting delinquent taxes should be transferred to the treasurer, because, to restate an old axiom, the duties of the auditing office should not be confused with those of the assessing, collecting, or purchasing agent.

The fee system has been a problem in Virginia since early times. A law was passed by the House of Burgesses in 1772 to regulate the

[2] Anderson, *American City Government*, p. 94.
[3] *Acts of Assembly*, 1926, p. 902.

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practice.[4] In 1914 the West Act was passed by the General Assembly. As amended in 1926, the measure places limits upon the fees which can be retained by clerks, treasurers, commissioners of the revenue, sheriffs, constables, etc.[5] The maximum personal compensation, which varies according to the office and population of the county, runs from $1,000 to $7,500. If there is a surplus above the compensation allowed for salary plus legitimate office expenses, it is turned over to the local or state treasury, depending on the office. There is a natural temptation for the local officers to expand their office expenses and cut down the excess that they would otherwise have to pay into the treasury. The survey shows that this is actually done by over-manning the office force by bringing in relatives and political supporters. It has not been the general practice of the state fee commission, which is busy with its other duties, to make detailed investigations as to legitimate office expenses.[6]

The fee system has been criticized as derogatory to efficient administration because the fee officer tends to neglect the small unremunerative jobs and devotes his attention to the duties that bring in easy returns. However, the survey shows that this is not a serious defect in the working of the system in Virginia. The bad effect is found, rather, in what may be called the bureaucratic attitude of the officer. "Most of the fee officers seem to feel that the offices belong to them personally, that the deputies and clerks are their own and not the county's, and that any service performed for the public is done as a personal favor." This is a rather severe indictment, but one which is inevitable when public office is farmed out at a price. The Bureau points out that the abolition of the fee system must wait for county reorganization. While it might be abolished immediately in the larger counties, the placing of the offices in the smaller counties upon a salary basis would increase the cost of county government.

As the numerous general and special laws on the subject show, there is no uniform policy of legislative control over county expenditures. The survey revealed the following conditions: "A great part of the county and school bonds are being sold privately without competition; bonds have been issued under the authority of special

[4] *Journals of House of Burgesses of Va.*, p. 214, quoted by Bureau of Municipal Research, p. 35.

[5] *Acts of Assembly*, 1926, p. 350.

[6] *Acts of Assembly*, 1927, p. 260. The state fee commission was abolished by the General Assembly in 1927 and its duties were vested in the controller.

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laws to fund deficits and other current expenditures; bonds are issued in all of the counties for periods of years far in excess of the life of the improvements financed; for instance, thirty year highway bonds have been issued for fifteen year highways, and bonds are, therefore, still outstanding for roads that have blown away. There is no proper control over the sinking fund, with the result that levies for this fund are not systematically made. Investments of the sinking funds are not made to good advantage. In one county it was found that the sinking fund account was not separate, with the result that the fund had been used to meet regular appropriations. In another county the sinking fund had sustained a loss because of a poor investment." The Bureau recommends that these conditions be corrected by a revision of the state code with regard to county indebtedness, together with definite provision for the state management of sinking funds and state approval of the legality of bond issues.

It is the usual practice for the county to use all the banks in the county as depositories for county funds. The survey shows that there are several counties which do not keep accounts with depositories, and that it is the rule for the banks not to pay any interest on the county funds which they handle. The Bureau estimates that the income of the county governments would be increased approximately $200,000 if the banks in every county were required to pay two per cent interest on active accounts and four per cent on inactive ones. It is likewise suggested that all collections of the treasurer should be deposited in banks daily. The controller should see that this is done by getting a duplicate of each deposit slip certified by the bank. He should also see that the treasurer keeps an account with the depository, and that these accounts balance with his own controlling account of the money in the bank. It is recommended that county purchasing be centralized under the county administrator; or the county may take advantage of the offer of assistance of the state purchasing agent to buy supplies through his office.

Several changes have recently been made in county government in Virginia. Besides enacting a law requiring county budgets,[7] the General Assembly in 1926 abolished land assessors and conferred

[7] The special session of the General Assembly in 1927 amended this act to provide that the boards of supervisors should file with the director of the state budget a copy of the county budget. The state director by this act is required to furnish the board of supervisors instructions and forms. *Acts of Assembly*, 1927, p. 127.

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their duties on the commissioners of the revenue[8]; segregated local and state revenues[9]; passed a law which requires county treasurers and city auditors to file with the state accountant a detailed account of the annual receipts and disbursements, and requires the state accountant, on the basis of this information, to publish annually a statement showing the comparative cost of local government[10]; and created the office of state tax commissioner, with powers to supervise the administration of the tax laws of the state.[11]

The work of the state tax commissioner has clearly justified this centralization of responsibility, because he has been active in acquainting the local commissioners of the revenue with the tax laws of the state and with the best procedure in assessment by sending them information and by lecturing to many groups of commissioners throughout the state. The state accountant has also been conscientious in carrying out the duties imposed upon him by the General Assembly. His annual report on the comparative cost of local government in Virginia is a compilation of information of value to the investigator seeking knowledge of this character.

In March, 1928, the General Assembly passed two measures which partially carry out recommendations made by the Bureau of Municipal Research. Senate Bill No. 125 enables the counties by popular election to employ a county engineer or a county manager. The county engineer would be required to devote his full time to supervising road construction. The county manager, if the county should elect to employ one instead of a county engineer, would be given broader duties than the latter officer. For instance, he would have charge of all matters "relative to the public roads and bridges, and other public works and business of the county except public schools." Moreover, he would be required to prepare the county budget, to act as county purchasing agent, and to keep the board of supervisors informed concerning the business of the county. In other words, the county which

[8] *Acts of Assembly*, 1926, p. 875.

[9] *Ibid.*, p. 955.

[10] *Ibid.*, p. 937. The General Assembly in 1927 abolished the office of state accountant and vested his duties in the auditor of public accounts (*Acts of Assembly*, 1927, p. 113).

[11] *Acts of Assembly*, 1926, p. 252. As part of the plan for reorganization, the special session in 1927 abolished the state tax commission, but retained the commissioner as head of the department of taxation. *Acts of Assembly*, 1927, p. 106.

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avails itself of a county manager, under the provisions of the statute, will have a responsible executive.

House Bill No. 189, besides codifying the school laws of the state, has several new features. In the first place, it provides for the abolition of the school trustee electoral board which has been performing the anomalous function of electing the county school board. On the expiration of the terms of the present incumbents, the county school board will go out of existence, and its duties will be assumed by the county board of supervisors. The statute, moreover, provides that school funds shall be budgeted with the funds collected for other county functions. All funds for school purposes are to be handled by the county treasurer in the same manner as other county funds. The board of supervisors, at their discretion, and instead of making a special school levy, may make cash appropriations out of the general county levy. But this appropriation must not be less than the amount which would result from a minimum school levy for the operation of the schools. It is seen that this law provides for one uniform system of county government instead of two.

It can in no wise be conceded that Virginia has a monopoly of bad county government. But perhaps in no state of the Union has a more penetrating searchlight been thrown upon this almost forgotten field of government than has been turned upon it in Virginia by the Bureau of Municipal Research. That the General Assembly did not adopt more of the recommendations is due to the fact that it was engaged in the governor's program for reorganizing the state administration. In any case, changes in county government will come slowly, because the legislature is controlled by county politicians who are naturally interested in maintaining the status quo.

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FOREIGN GOVERNMENTS AND POLITICS

EDITED BY WALTER J. SHEPARD

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Political Developments in Italy. "Italian unification" is an old phrase, today acquiring new meaning. Whatever Garibaldi would have thought of D'Annunzian and Fascist squadrism, however Cavour would have viewed the modern cult of Machiavelli, avowed by Mussolini, one may be sure that Mazzini would have been shocked at the chauvinist absolutism now proudly boasted by the Fascist régime: absolutism in the sense of an executive guided by its own intuitions and conscience, free from political criticism or parliamentary control; absolutism also in a sense for which English words are wanting, except as we boldly transliterate, and hope that "intransigence," "totalitarianism," will be understood to mean an all-inclusive hundred-percentedness. Italy is called by Mussolini "monolithic," all of one piece, tolerating anti-Fascist criticism no more than other states tolerate treason; all in and for Fascism, nothing against Fascism. Indeed, Fascism, without ceasing to be a party, has become the state. For parties in Edmund Burke's sense there is supposed to be no more need than for the factions Washington abhorred. Opposition such as is normal in the Cavourian scheme of parliamentary government—responsible critics, loyal and ready to take their turn in governing—is superfluous, a mere obstacle or obstruction to efficiency. None is permitted—in parliament, in press, in platform, or even in theory.

What has just been said is presented, not by way of judging, but only of summarizing, the attitude firmly (courageously or arrogantly, according to the observer's prejudices) maintained by the powers that be in Italy today. The recent months have seen several important steps taken in the direction of institutional realization of this view. The year 1928 may perhaps be denoted as the period in which the attempt was made to give a régime that had already a *de facto* existence a higher, *de jure* standing by formal parliamentary sanction. It may be left to the constitutional metaphysicians to discuss whether ex-Premier Nitti is right in impugning this whole proceeding as unconstitutional and void because of the original taint of violence in Fascism's seizure of office (1922), continued by violence in purging out the Aventinist parties from Parliament in 1925, not to speak of

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assassinating the two leaders Amendola and Matteotti, leaving, as anti-Fascists would say, a rump parliament which could give no *de jure* standing to anything.

First may be mentioned a ministerial shift that took place in July, 1928, the first in three years. Volpi resigned, the "man of the Banca Commerciale," who for three years had presided over the regulation of debt relations with Great Britain and the United States and also the stabilization and revalorization of the lira. Fedele also resigned, the professor of history who, as minister of public instruction, had been attempting to execute, with adaptations, the Gentile "fascistissima" reform of public education. To succeed Volpi, Mosconi was promoted from one of the technical services of the Treasury; to Fedele's position, Belluzzo was moved from the ministry of national economy, his place being filled by promoting Martelli, formerly undersecretary of communications. On the same occasion there was an extensive reshuffling of under-secretaryships, places being found for eight new recruits to the ministerial group, according to Mussolini's familiar practice of giving a large number of young Fascist deputies short terms of executive duty. New governing personnel is thus introduced to the responsibilities of executive power; it is tested and promoted or dismissed as seems wise to the all-powerful One.

There may have been personal desire for relief on Volpi's part, as has long been rumored, or even an unwillingness to continue to bear the heavy responsibility for the gold value of the lira at a figure that was chosen for the sake of political prestige (beating Poincaré's franc) and which is imprudently high, if judged by economic criteria. But, taken as a whole, the process of recasting the ministry was emphatically not a ministerial "crisis." Instead, orders were given, in military manner, to be accepted and obeyed in strict discipline. In several instances it is known that the change of office came entirely without the officer's foreknowledge. Theirs not to reason why; especially theirs not to claim or refuse.

The death, on July 17, 1928, of the aged Giovanni Giolitti removed, not an obstacle from the path of integral Fascism, but rather an obsolete way-marker, a symbolic reminder of the *parlamentarismo* from which Fascist Italy proudly boasts that she has won her freedom. His public service began almost precisely with the life of United Italy (1862), and included twenty years in the bureaucracy and then forty-two years in Parliament. Though he did not aim at or cause the *parlamentarismo* of these years, it was not an unfair legend of mere

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Fascist invention that associated his name with its development—that demagogic degeneration of parliamentary government, corrupted by and corrupting the bureaucracy, the Chamber broken into a kaleidoscopic picture of incoherent fragments, self-seeking personal and semi-feudal clientèles which had no genuine liberalism or conservatism or other political ideal, which sold their votes in changing combinations to the omnipotent political manipulator in return for administrative spoils, and by him were maintained at election time, by administrative pressure, by the political use of the public force, or even, in the desert South, by protected thuggery.

In many respects it was Giolitti's long dictatorship (1903–14), veiled under parliamentary forms that prepared Italy for accepting that of Mussolini. It must even be admitted that Giolitti's conduct in 1921, the year of his last premiership, was one of the important factors in Mussolini's success. Giolitti caused the king's government to accept the alliance of the Fascists, then a mere group of disgusted, ultra-nationalist war veterans, mostly of revolutionary aspirations, who despised bourgeois society, but hated socialists with a still more perfect hatred. In the parliamentary elections of May, 1921, Giolitti admitted a few Fascists to the Government's lists, hoping thus to reinvigorate the Giolittian "Democratic Liberal" forces and enable them to smash the non-coöperating millenium-hoping Socialists and Don Sturzo's Christian Democrats. After the electoral battle the shock troops were to be retired to the oblivion deserved by their governmental inexperience and their unconstitutional violence. Giolitti's electoral strategy failed completely; but he had admitted revolutionary Fascism to political respectability, and by the subsidies of its new allies, Big Business and Feudal Agriculture, it gradually grew to become a military state within the legal state. In this same period, Giolitti acquiesced in the honeycombing of the Italian army with Fascist politics, on the one common point of D'Annunzian nationalism. Thus was unwittingly prepared the situation of October, 1922, when the legal Italian state succumbed to the attack of revolutionary Fascist power because its defenders were Fascist in sympathy—the old story of revolution won by the army going revolutionary, the servant of the state become master.

Still it must be counted to Giolitti for righteousness that, as if in death-bed repentance, his last public appearance was a dignified protest in the Chamber, February 16, 1928, against the adoption of the new parliamentary system outlined below. Declaring that this

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scheme "marks the decisive departure of the Fascist régime from the régime directed by the Statuto," he must needs vote against it. He was left unanswered, as if not worth answering—a futile voice from the dead, almost forgotten, pre-Fascist past.

The plan for a body that should supplant the Chamber of Deputies had been more or less in the air for three years. Trial balloons had been sent up from time to time, mostly with reference to the central idea that representation should come from productive associations (trade unions and employers' syndicates) rather than from masses of citizens grouped by their residence in territorial areas. But of equal importance was the effort to realize integral Fascism, to enable the executive to be rid of doctrinaire politics, of demagogic politicians, and indeed of all political opposition. The final plan was agreed upon late in 1927 in the Fascist Grand Council, and was presented for passage (with beat of drum) in the Chamber in February and in the Senate in May. All went according to program, and the new process is to be given its initial operation in the first three months of 1929.

Mussolini's report on this system indicated that Fascism "had never intended to build up a completely autocratic régime or inaugurate a police-state." The ruling class desired still to draw from the people the men necessary to its own constant renewal. But the old idea that Parliament is the dominating organ is now emphatically rejected, as a relic of the outworn dogma of people's sovereignty. It is Fascism's will, on the contrary, that the *state* shall be sovereign. In this state, Parliament is to be one of the fundamental organs, to collaborate with the Government in drafting laws. But its function is to be essentially consultative rather than regulatory. The reconstructed Chamber's *raison d'être* is that it represents the new Italy, completely Fascist and integrally "corporative," one body made up of Fascist corporations.

The corporative Chamber is produced by a threefold process: the productive and social organizations *suggest*, the Fascist Grand Council *selects*, the voters *approve*. There are 400 deputies, but they are selected with reference to one area, the nation at large. These 400 are selected freely by the Fascist party's supreme organ. It is true that there is elaborate provision for nomination of a double number by the national associations of economic character,[1] and also for nomination of candi-

[1] This portion of the list is by law distributed among the several economic interests in the following proportions:

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dates by various cultural associations (not designated in the law), to the number of half the deputies to be elected.[2] But the Grand Council is not restricted to any proportion among these categories; the names are presented to it in alphabetical order; and it is expected to go

			Per Cent	*Masters*	*Men*
National Confederation of Agriculture		Employers	12	200	
" " "		Workers	12		550
" " Industry		Employers	10	500	
" " "		Workers	10		6000
" " Commerce		Employers	6	113	
" " "		Workers	6		1000
" " Maritime-Air Transp.		Employers	5	50	
" " " "		Workers	5		100
" " Land Transportation		Employers	4	21	
" " " "		Workers	4		700
" " Banking		Employers	3	50	
" " "		Workers	3		100
" " Artists and Professional Men			20	250	
			100	9634	

The two columns at the extreme right indicate the approximate numbers of persons who will participate in the nominations, by reason of membership in the general councils of the several confederations (*Corriere della Sera*, Sept. 29, 1928). These bodies meet in Rome, and act by plurality.

[2] A report from this joint committee was presented December 8, 1928, indicating approximately how these 200 nominees are to be apportioned. A considerable share come from certain categories of persons who cannot be allowed to unionize themselves: 5 from the railroad men, 2 from the postal and telegraph services, 2 from industries dependent on the state, 28 from the other public employees, and 55 from the staffs of public instruction (universities 30, middle schools 15, primary schools 10). Nearly as large a representation is allotted to the nation's war heroes, i.e., 45 to the *Combattenti* and 30 to the *Mutilati*. The remaining 33 are to stand for certain ideal values in the state: 9 from the academies of learned men; 2 from the institutions of fine arts; 3 from Gentile's Fascist Institute of Culture; 2 from the "Dante Alighieri," long famous for its propaganda of irredentism; 8 from the Nationalist propaganda institution; and one representative for each of the following nine ideas, which are mostly embodied in semi-public associations under Fascist guidance: the navy, the colonies, coöperation, savings, corporately organized capital, reclamation of agricultural land, home travel (the Touring Club), athletics (the Olympionic Committee), and "labor improving its leisure" (the *Dopolavoro*).

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outside of them entirely, when necessary, to include persons eminent in science, letters, art, politics, and arms.[3]

After the Grand Council has made up its list of 400, on the third subsequent Sunday comes what the law calls "voting for approval of the list." The voter has in his hand only a ballot bearing the Fascist party emblem, and may vote "Yes" or "No" on the question "Do you approve the list of deputies designated by the Grand Council of Fascism?"

The voting franchise is possessed by (male) Italian citizens of 21 years (and of 18, if married and having children), on condition that they satisfy one of the following qualifications: (1) payment of dues to a union; (2) payment of 100 lire direct taxes or an income of 500 lire from public bonds (state, provincial, or municipal); (3) receipt of stipend from the public; and (4) membership in the clergy of an admitted religion. It is expected that the number of voters will be substantially as heretofore.

The terms of the law contemplate the possibility of the list's rejection, and provide in such a case that in a later election associations counting at least 5,000 inscribed voters may nominate lists. Such lists may not comprise over three-fourths of the number to be elected. The list that obtains the plurality is elected in its entirety. The remaining one-fourth of the Chamber is to be distributed among the other lists in proportion to the number of votes cast, by the application of a list quotient. This contingent system is, however, universally regarded as of no practical significance. The reporter of the bill, De Vito, on concluding the Senate debate, May 12, having been asked about the possibility, replied: "It is not the task of an electoral law to preoccupy itself with such consequences [as if one were imagining revolution]. Many, many years will pass before such an hypothesis assumes reality, because the work of the Government corresponds effectively to the interests of the nation and has the applause of all Italian citizens, and is even envied abroad."

In the adoption of a law regarding the Grand Council one may see the logical conclusion of long previous developments. From the beginning of its career, the Fascist movement, later becoming the Fascist party, must needs have internal organization. The personality

[3] This is the sole point at which the bill underwent amendment on its passage through Parliament. The words "and arms" were added in the Chamber, on motion of Deputy Baistrocchi, to the list of qualities of fame which should occasion the Grand Council's going outside of the lists presented.

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of its leader needed supplementing in the multifarious tasks of party command and guidance; for they were from the outset both political and military, both propagandist and administrative—all the more when the party seized control of the national government, which made the tasks even more numerous, multifarious, and weighty. An elite of responsible sub-leaders gathered around the *Duce*, with their several specialties to contribute to a unified action. The one-man government required that one man be able positively to rely on other subordinate one-man powers, ordered in a hierarchy for administration, but also fused in a single body for collective, confidential advice. Such has been Mussolini's Grand Council, first of the party, now of the nation, since "totalitarianism" fuses party and nation.

For six years this body has been acquiring consciousness of itself. It was always summoned and presided over by Mussolini, and its personnel was determined by him. No person was a member by virtue of office. No matter was on its agenda save by Mussolini's will. It had no power or will or function except as an enlargement of his personality.[4] A project of law or administration, even of profoundly constitutional character, made its first appearance in a "report," by Mussolini or a close lieutenant, to the Grand Council. In secret session, as in an English cabinet or an American steering committee, the pros and cons were weighed, the wisdom and tactical expediency, and the present feasibility—all with reference to Fascism's grand design of ruling Italy. After adoption in the Grand Council, a project was ready to go through the several stages of legislative routine: adoption by the ministry, debate and vote in the Chamber and Senate, royal signature, and promulgation. These later stages have all tended to become matters of routine, and the only real deliberation is in the Grand Council.

The notable change of system in late 1928 consists in the adoption into formal law of an institution which had previously existed only in the understandings of the Fascist constitution. There may be some loss of flexibility in this effort at formulation of composition and function, but the change seemed to be necessitated by the parlia-

[4] One might suppose a parallelism with the French *conseil d'état*, that Napoleonic repository of technical advice in legislation and administration, providing check and assistance to the one-man power. The Italian system has long had a *consiglio di stato* on the French model, its functions being purely juridical, in the field of administrative law. This *gran consiglio* of the 1928 law is, on the contrary, absolutely (*squisitamente*) political.

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mentary reform of February-May, 1928. The new Chamber was to be designated to the voters by the Grand Council. As was pointed out in the Senate debate, this supremely important function was devolved upon a body unknown to the law. That defect is now remedied. Following the usual procedure, the Grand Council adopted a report on its own composition and function (September 20, 1928), which report was later permitted to be discussed and adopted by the Senate, on November 16, and the Chamber, on December 8.

The membership of the Grand Council totals some 35 or 40, the uncertainty being due partly to the flexibility of one item, partly to the fact that certain persons qualify under two or more legal titles. All are appointed by royal decree on proposal of the head of the government. The present members are the ministers, i.e., Mussolini (by virtue of six portfolios besides the presidency of the Council), Rocco, Federzoni, Mosconi, Belluzzo, Giuriati, Martelli, Ciano, and the four most important under-secretaries, Giunta, Grandi, Bianchi, and Bottai; the presidents of the Senate (Tittoni) and Chamber (Casertano); the quadrumviri of the March on Rome (Bianchi, Balbo, DeBono, DeVecchi); the head of the national militia (Bazan), which continues the party "squadrist" army of 1922; the secretary (Turati) and eight assistant secretaries and directors of the party; former Fascist ministers of five years' standing (none at present); former secretaries of the party (three, including the famous Farinacci, fiery spokesman of intransigent Fascism in the trying days of the Matteotti crisis of 1924–25); the philosopher Gentile, as president of the National Institute of Culture; Rossoni, as president of the National Confederation of Trade Unions; Benni and Cacciari, as presidents of the national confederations of industrial and agricultural employers; Alfieri as president of the coöperatives; Maraviglia, as head of the autonomous cultural associations; Ricci, as president of the *Balilla* (Fascist boy scout pre-militia training body); and Cristini, as president of the Special Tribunal for Defense of the State. In addition, Enrico Corradini, the veteran Nationalist journalist, is included as one of a category, unlimited in number, whom the head of the government may call in "for a determined time, men well deserving of the nation and of the Fascist revolution, or particularly competent in matters submitted."

Service in this body is gratuitous, but is privileged: no member may be arrested or subjected to police disciplinary measures without the consent of the Grand Council itself The meetings are secret, and

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its decisions are valid, whatever the number of members present. The *Duce's* control, in the sense of a veto power, is not mentioned in the law, but is implicit in all the provisions for the Council's make-up and conduct. He convokes the Council when he deems it necessary, fixes its agenda, and presides.

The functions are summarized in Arts. 7 and 8 of the law as follows: "The Grand Council decides on (1) the list of deputies (law of March 17, 1928), (2) the constitution, regulation, and policies of the National Fascist party; and (3) appointment and dismissal of secretaries and directors of the party." It must always be consulted on questions of constitutional character, such as: proposals of law touching the succession to the throne, the king's powers and prerogatives, the composition and function of the Grand Council and of the Senate and Chamber, the naming and prerogatives of the head of the government; also the executive's power of issuing legal rules and trade-union and corporative regulations, relations between the state and the Catholic Church, international treaties that involve territorial changes, the state and its colonies, and renunciation or acquisition of territory. The Grand Council makes and keeps a list of names to present to the crown in case of vacancies, for appointment of head of the government or ministers. The Grand Council is "the supreme organ which coordinates all the activities of the régime that arose out of the revolution of October, 1922. It has deliberative functions in all cases fixed by law, and also gives its opinion on every other question of national interest, political, economic, or social, submitted to it by the king's government."

The outstanding innovation is not comprehensiveness of function, nor is it unity; these qualities were always implicit in all actions of the Grand Council as the informal staff meeting of Mussolini's intimate advisers and lieutenants, the whole régime unified in him and his aristocracy of Fascist fellow-servants. What is new is the supposed provision for continuity. If Mussolini were to be suddenly carried off, the national disaster is to be mitigated by a clear, institutional understanding among his lieutenants as to the succession and the hierarchical order in that succession; the corporation (Fascist Italy) is not to be dissolved or embarrassed by loss of its superintendent. The observer may doubt whether this provision is practicable. The ambition of a designated successor is a danger which no amount of secrecy or discipline can conjure away. Mussolini has said repeatedly that his successor is not yet born.

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In all this provision for ministerial succession and treaty-making, what of the king, who by the constitution should choose his own ministers and conduct foreign relations? Fascist loyalty to the king has been proclaimed loudly, especially in the late months of 1928; all governmental power is declared to be his and exercised in his name. But the real answer has been indicated clearly enough by Mussolini on repeated occasions: the Albertine constitution of Sardinia-Piedmont is dated 1848, and has no power to limit the statesmen of Fascist Italy.

The king's loyalty to legal form and constitutional theory may lead him still to accept the situation. But if he continues thus to efface himself, if notwithstanding his oath to maintain the Statuto he makes himself a mere symbol, a flag that blows with the wind—whether it be the conservative Cavourian wind of Sonnino (1910), the Left-friendly parliamentary-dictatorship wind of Giolitti (1903–1914), the parliamentary-anarchy wind of Nitti (1919), or the self-willed autocratic whirlwind of Mussolini (1922–28), who even prepares to designate his successor as premier in an unknown future—to many loyal souls, enemies as well as friends of Fascism, the Statuto seems plainly to have ceased to exist; the king is not a constitutional monarch but a Merovingian symbol of royalty, and the Mayor of the Palace is in this recent law declaring the new constitution of Fascist Italy.

The whimsical or cynical may suggest that one sign of the normalization of the Fascist régime, at least of its definitive acceptance as the government of the Italian state, is the now manifest hopelessness of the régime's finding a solution of the ancient problem of Roman Church and Italian state.

The Fascist absorption (1923) of the pro-clerical Nationalist party and program, and especially the growing influence of Rocco and Federzoni (ministers of justice and the colonies), had seemed to justify high hopes that at last a régime had been established with which the Roman Church could with good grace and dignity make peace. The first years of Fascist rule were punctuated frequently by state courtesies to the Church, reciprocated in kind, all in striking contrast with the anti-clericalism of all Italian politics since the breach—lamented by both sides—of the Roman Porta Pia on September 20, 1870.

But if the Fascist state in 1927–28 finds its sign in "intransigence," mainly with reference to practices of the liberal constitution, intransigent absolutism is no Fascist invention; it is a game in which

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the Roman Church has been expert, not for months but for centuries. One thing is sure; the Pope will not accept a position, under Mussolini's patronage, as chaplain of even a pro-clerical Italian state; and by the same token Mussolini will not accept a position under Pius XI's patronage as chamberlain of the papal curia. If the Church is ancient, Fascism is full of youth. Fascism also is a religion, and its adepts are full of faith and fervor.

From time to time the press announces that at last, as the result of Father Tacchi-Venturi's negotiations, Mussolini is about to add the remarkable feather to his cap of a definitive solution of the Roman Question; e.g., there is to be a negotiated settlement in place of the Italian state statute of papal guarantees, which is theoretically repealable. A concession of territory in the Leonine City is rumored; or proprietorship is to be substituted for mere possession of the Vatican palace, etc., etc. But these are all mere hints and hopes; the definitive solution has yet to arrive.

On the whole, the year 1928 saw relations between church and state grow worse rather than better. The point most sharply discussed was education, claimed by each party to the dispute as its indispensable monopoly. In May there rose a sharp controversy regarding the Catholic boy scouts, an organization which had been continuing to function in the smaller towns. As this seemed an infringement on the Fascist monopoly of the training of youth (the *Balilla* organization), the government took drastic steps to end the anomaly. After severe interchanges in the Fascist and Vatican press, a modus vivendi was reached whereby the clergy were allowed to function in the field of religious instruction but physical and cultural training was to be wholly under Fascist auspices. About the same time there was a sharp rebuke, delivered on clerical authority, to the philo-Fascist political group known as National Catholics, indignantly reasserting that the Church is still suffering oppression from the civil power, oppression that is intolerable to the faithful.

How can two absolutes be in relation? The Fascist absolutism sincerely desires good relations; but here is a point in which it cannot act *fascisticamente* (in a hurry). The Church absolutism has its own objectives to pursue; but it also is in no hurry. Having waited nearly sixty years, and now finding the state ready to assume a conciliatory attitude, the Church can afford to wait. The end is not yet.

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The Spanish Directory and the Constitution. It is one of the surprising things in contemporary political science that at a time when what is known as "the pragmatic revolt in politics" is an outstanding phenomenon, and when lavish attention is being bestowed upon the histrionic adventures of Italy into the fields of political realism, the experiments of the Spanish Directory tend to be passed over without serious investigation. Spain has been treated as though her experiment were only a futile or less meaningful, slavish imitation of the work of *Il Duce*, as though the Iberian peninsula were witnessing only *in parvo* the monumental experiments of Fascism. This easy dismissal of the work of the Directory in Spain may be comforting in its simplicity, but it is a distinct over-simplification and an attempt to argue from analogy where the basic and essential elements of a similar situation are lacking. Merely the fact of dictatorship, merely the supposed association of an armed partisan force with the dictator in power, merely the fact of the abrogation of public liberties in each instance have been taken to constitute the essential elements of comparison and identification. The less dramatic character of the events in Spain has tended to obscure the far-reaching differences between the régimes centering in Rome and Madrid.

Apologists for the old régime overthrown by the Spanish Directory are wont to attribute the constitutional evils of Spain to the fact of the army's participation in politics, believing that in the constitutional history of the nineteenth century it was parliamentarism, and parliamentarism alone, that brought Spain from a mediaeval absolutism into whatever political modernity she enjoyed before 1923.[1] On the other hand, the vindicators of the Directory and its works have pointed out that in the nineteenth-century constitutional development of Spain it was in reality the army, acting as the vigilant guardian of the nation's welfare, that at appropriate moments enlightened the sovereign through its *pronunciamientos* and brought about the requisite concessions of popular liberties.[2]

[1] Cf. Conde de Romanones, *Las Responsabilidaded Politicas del Antiguo Regimen, 1875-1923*, especially Chaps. V and VII and Epilogue. "It may be affirmed that the parliamentary institutions in our country in no wise prejudiced its development nor furnished an obstacle to governmental programs. . . . . The discussions in the Cortes served to awaken popular interest in political problems and inform the public about them. Furthermore, Parliament in Spain, as elsewhere, has been the sole check on royal authority and that of the Government." (pp. 353-354).

[2] Cf. Pedro Sainz Rodriguez, "Interpretacion Historica de la España Con-

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Both of these ready-made, self-vindicating explanations contain a modicum of truth, but they do not in themselves tell the whole story. There can be no gainsaying the fact that throughout the major part of the nineteenth century the army, having been the original instrument of liberation of the nation from the Napoleonic yoke, played an active part in Spanish politics. The legacy of liberation was a taste for power; for sixty years, from 1814 to 1874, the army was the determining factor in the political evolution of Spain. In default of an active public opinion or an enlightened, or at least literate, electorate, the army, being more truly representative of every class in the nation, made and unmade governments. Basically, it was this fact, added to the absence of a respectably large bourgeoisie, that made the abortive attempt to implant "republicanism by resignation" in the third quarter of the nineteenth century a dismal failure. The army was always royalist to the core, and since there existed no other organized support for a régime than the army, republicanism was foredoomed to be a sterile and fruitless adventure. In the end, after a dilettante acquaintanceship with the republic, Spain was more than willing to accept the monarchy as the traditional stabilizer of society; hence the Restoration.

The period from the Restoration to the Directory—almost exactly half a century—witnessed an effort to implant, by imitation, the parliamentary system. As an antidote to pretorianism, Canovas del Castillo attempted to utilize local bossism—*caciquismo*, as it was known in Spain—as the buttress for parliamentary institutions. The attempt was successful in so far as it eliminated the army from politics and relegated it to its place as the ministerial servant of the crown.[3] The price Spain paid for the exaltation of bossism into a cardinal principle of statecraft was, of course, notorious maladministration and a vicious system of both spoils and rotation in office. It is unnecessary to do more than recall the Pacto del Pardo—the rotation agreement reached by Spanish politicians at the death of Alfonso XII

temporanea," *Revista de las Espanas*, Vol. III, pp. 251-3 (June-July,1928), and Maurice Legendre, "Die Spanische Krise in Ihren Augenblicklichen Gestalt," *Europäische Revue*, Vol. I, Pt. I, pp. 102-103 (1925).

[3] Rigid centralization, after the Restoration, made it possible to nip in the bud the conspiracies which had been inveterate in the preceding fifty years of Spanish politics. That, at least, stands to the credit of the constitutional régime. Cf. R. T. Desmond, "The Régime in Spain," *Foreign Affairs*, Vol. 2, pp. 458-459 (March 15, 1924).

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—to note that with such a foundation parliamentarism, in its genuine sense, was made *a priori* impossible. Only the veneer of the parliamentary system existed; the Cortes was hardly representative, in view of the manufacturing of electoral majorities by whatever factions were in power when the electoral day arrived. In performance, the Cortes engaged in endless disputations and masterly inactivity. In short, after a half-century of pretorianism, another half-century of Byzantinism was found to offer but little gain.[4]

The immediate causes of the downfall of the old régime need not be considered in detail. In the general *malaise* that settled down upon western Europe after the World War, Spain was not spared. Though she had been neutral, her internal strength had been wasted on the unpopular Moroccan adventure, and the collapse of the market which the Allied countries had provided during the period of hostilities removed any artificial buoyancy from the steadily sinking ship of state. While the parliamentarians at Madrid discussed in impotence, unrest, strikes, violence were the order of the day throughout Spain, and Catalan separatism grew to dangerous proportions. No shifting of ministries, no reshuffling of the parliamentary deck offered any prospect of relief from these discreditable conditions. *Caciquismo* had been weighed in the balance of experience and found wanting. Under the circumstances, there appeared to be no alternative save to fall back on the traditional support of monarchical authority, i.e., the army. That the army had been aware of the situation and its growing evils ever since June, 1917, is now quite clear. The forming of military juntas which reëntered politics was symptomatic of the situation. In consequence, when the inciting moment came, at the darkest hour in the Moroccan war, the blow was struck and the Directory came into power. That it was accepted by all classes of society except the parliamentarians and a rump of the intelligentsia is not without significance. Save for these, the régime of the Directory was virtually unopposed.

The first year of the new order was essentially negative, destructive. It was largely a period of dissolution and uprooting, in which the extirpation of practices and institutions widely believed to be responsible for Spain's situation took place. The Cortes, dissolved immediately after the Riverist *coup d'état*, disappeared from the scene. When the constitutional period of three months during which a new legislative body was supposed to be convoked passed without royal

[4] Albert Mousset, *L'Espagne dans la Politique Mondiale*, pp. 16-18.

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action, it was realized that for all practical purposes the constitution of 1876 was juridically dead. In any event, neither the crown nor the army—nor indeed the Church, which was, and continues to be, the moral mainstay of the dictatorship—lifted a finger in its behalf.[5] But the destruction did not stop there. It extended to the local governmental institutions. Both the municipal councils and the *Mancomunidad* of the region embracing Barcelona—an inter-provincial aggregation—were unceremoniously dissolved, and for a time nothing but military government, systematically organized throughout the country, functioned. It was necessary, in the mind of the Directory, to destroy *caciquismo* thoroughly and root out institutions that buttressed the old régime if substantial progress was to be made in the rebuilding of the constitutional structure of Spain. Hence, while the Moroccan war was gradually liquidated and law and order were restored in Catalonia—not without summary executions by courts martial—the constitutional life of the country was in abeyance.

Within six months of its assumption of power, the Directory began its "constructive" reforms in the field of municipal government, and the *ayuntamientos* received, by the Municipal Statute of March 8, 1924, a new basic pattern of organization which introduced the principle of corporative representation as the essence of local self-government. A year later, on March 20, 1925, the provincial governments underwent overhauling, and the Provincial Statute replaced the old assemblies by new bodies made up of representatives of organized corporate interests within the provinces; while the provinces were allowed to combine into regional confederations for the purpose of carrying out certain undertakings, such as the establishment of hydro-electric plants and power systems along the various river basins. Thus, by "renovating" the life of the country from its lowest units upwards, it was found possible to open the way for regional economic self-determination and to kill the separatist movement by cutting the ground from under its feet. Although military force had been used to repress the Catalonian separatist and syndicalist movement, and the *Mancomunidad*, whose charter had been extorted by the Catalonians from the old Cortes, was done away with, the concession of the right of inter-provincial coöperation along economic lines proved a fruitful

[5] When the Speakers of the Chamber of Deputies and Senate appeared before King Alfonso on December 17, 1923, to inform him that the constitutional period was lapsing, they were dismissed from office by the monarch at the instigation of the dictator.

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step in quieting regional demands and inaugurated the principle of both political and economic decentralization as a remedy for the marked over-centralization of the older régime.

Two years after taking office, the Directory ceased to be military; on December 3, 1925, it became a civil dictatorship. Gradually the military delegates in the provinces were withdrawn and civil institutions—without constitutional guarantees, to be sure—were permitted to function independently. A year later, on the occasion of the plebiscite of approval which the Directory demanded, it was announced that the next stage in the institutional rehabilitation of Spain would be the summoning of a consultative national assembly as an advisory, independent body capable of undertaking systematic fact-finding and reporting to the Directory the results of its inquiries.[6] Being purely consultative, and therefore non-political, it was anticipated that the body would prove of distinct usefulness in grappling with the basic economic and legal problems affecting the country. It was not, however, until September 12, 1927, on the eve of the fourth anniversary of the Riverist *coup* that the royal decree-law creating the body was issued. On October 10, 1927, the Assembly convened under the presidency of José Yanguas, ex-minister of state and of foreign affairs. The nation thus came into possession of a national representative body for the first time since the dissolution of the old Cortes.

The Spanish National Assembly is in the main *sui generis*, without prototype or predecessor. In post-war Europe it is the first national representative body to have been chosen on the corporate group-interest representation principle exclusively.[7] It is not comparable in

[6] "In convoking the Assembly it was not thought, as some believed, to substitute it for the ancient Cortes, but to give the country an organ which, without having the essential characteristics common to every parliament, to legislate and share sovereign power, should collaborate, independently of the Executive Power, in the work of governing, drawing up general legislation in complete fashion which should in its proper time be submitted to the Legislative Power for approval. Other tasks entrusted to the Assembly include surveying the activities of the government, studying projects and proposals relative thereto, proposing economies in public expenditure, and inspecting the functioning of given services or organisms of the state, provinces, or municipalities." Manuel Raventos y Noguer, "La Asemblea Nacional Española," *Revue de Droit International* (Geneva), Vol. 5, pp. 321-328 (1927).

[7] Under the royal decree-law of September 12, 1927, the Assembly is composed of 400 members, selected for a three-year term, subject to certain safeguards. It represents, not territorial areas, but divers interests of the national

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any way to the unicameral assemblies of a more or less constituent character which have functioned in other countries; nor is it exclusively an economic parliament, such as the *Reichswirtschaftrat* was intended to be under the Weimar constitution. It is somewhat akin to the Grand Council of Fascist Italy, as that institution has been created under laws recently decreed by the Italian dictator. Having, however, preceded that institution by at least a year, it can claim both precedence and originality in its internal constitution.

The Assembly convenes annually in October and remains in session, fractionally[8] or as a whole, until the end of July, barring secular or religious holidays. In practice, the body has conducted its sectional work for the first three weeks of each month and has held its plenary

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life—scientific, economic, political, and financial. Apart from a sprinkling of outstanding figures of a non-political character, classed as "personal values," its membership is composed of five main groups: (1) representatives of the municipalities of each province; (2) representatives of the provinces; (3) provincial representatives of the Patriotic Union—the only organized group of followers of the Directory, though not officially a political party; (4) representatives of the state, i.e., heads of the different branches of the administration, the higher clergy, the higher officers of the army, navy, and judiciary, together with representatives of various advisory boards; and (5) representatives of culture, production, labor, and commerce, designated by the government from among the members of the different agricultural, commercial, scientific, educational, economic, trade, and professional bodies, as well as from the ranks of farmers, business men, and industrialists. The first two categories are elected by the deputations of the *ayuntamientos* and provinces, respectively, from among their own membership. It will be recalled that these are now corporately representative bodies. Ministers of the crown cannot be members, although they participate freely in the Assembly's deliberations. Women as well as men belong to the Assembly, this being an unprecedented provision in Spain. Their presence clearly reveals that the stabilizing influences of religious conservatism were sought for by the Directory in deciding on the composition of the Assembly.

[8] The real work of the Assembly is done in eighteen sections, containing at least eighteen members apiece, as follows: (1) Drafts of Constitutional Laws; (2) Proposals and Reports on Treaties, Agreements, and Concordats with other Countries or Powers; (3) National Defense; (4) Tariff Policy; (5) Codification of Civil, Penal, and Mercantile Law; (6) Laws of a Political Character; (7) The Régime of Property and its Use; (8) Tax System; (9) Production and Commerce; (10) Education and Instruction; (11) Examination and Classification of Credits . . . . whose origin antedated September 13, 1923; (12) Ordinary and Extraordinary Loans; (13) General Plans for Public Works; (14) Social, Sanitary, and Benevolent Work; (15) Administrative Reorganization and State Accounting Legislation; (16) Land, Sea, and Air Transport and Communications; (17) Extraordinary Pardons; (18) Political Responsibilities.

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sessions—not exceeding four—during the last week. The Assembly being a non-political body, the government is not given the right to postpone or suspend its sessions (as was the common fate of the Cortes under the old régime) or to expel its members. It may not, however, talk itself to death, as there is a most rigid limitation of debate; no speech of more than twenty minutes' duration is permitted, nor a rebuttal of over ten minutes. In no other deliberative assembly in modern times has so rigid a restriction been found necessary.

With this consultative body to assist it, the Directory has, during the past year, undertaken the basic task of constitutional reconstruction. Speculation was rife during the work of the First Section of the Assembly, i.e., that intrusted with constitutional projects, as to the nature of the anticipated reform. When the official draft on which deliberation has centered became available,[9] it was seen to depart far less from the institutions under which pre-Riverist Spain functioned than had been generally anticipated. In lieu of the wholesale reconstruction of national institutions attempted in Italy, the proposals of the Directory have altered the pre-existing scheme of government as little as possible, while still carrying out the principal idea of strengthening royal and executive power. Hence, instead of planning an entirely new constitution, the Directory proposes only a "reform" of Titles II, III, IV, V, and VI of the constitution of 1876. The reform, as might be expected, touches primarily the question of the legislative system and the relations of the public powers, resembling in this respect the constitutional laws of France dating from the time when her National Assembly was called upon to reconstruct the broken edifice of Napoleonic authority.

Foremost among the changes proposed is the substitution for the sterile bicameralism of the old régime of a single-chambered Cortes, with a five-year term, which will have a virtual monopoly of genuine legislative power. The Cortes, or, more properly speaking, the Chamber of Deputies, is to be a compromise between a purely elective body and the present indirectly elected Assembly with its nominated group representatives. Three hundred of its members are to be elected directly, one hundred and fifty are to be chosen by the various social groups, and the residual element, undefined in number, will be royal appointees. In many respects, therefore, the promised Cortes is to

[9] Cf. M. W. Graham, "The New Spanish Constitution," *Current History*, Vol. XXVIII, pp. 644-647 (July, 1928), for the text of the proposals and a brief commentary.

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resemble the present Assembly. Its corporative character, its sessions and procedure, its legislative and investigatory functions are to be much the same; but it will possess, in addition, powers of impeachment and interpellation closely akin to those exercised by the defunct parliament. A new feature in the draft is the referendum which may be exercised on special or urgent occasions at the discretion of the king. This is apparently intended to safeguard future legislation against the potential obstructiveness of the new Cortes.

Next in importance is the proposed Council of the Kingdom, "a representative, consultative, and jurisdictional organ," largely appointive, and, like the Cortes, representative of corporate interests.[10] This body is intended to perform a variety of functions, partly those of an upper chamber, partly those of a constitutional court, as regards legislation. In addition, it will perform advisory and censorial functions regarding foreign relations, economic matters, national defense, judicial administration, and the selection of a premier. Finally, it is to be a high court for impeachment cases, a supreme administrative tribunal, and a tribunal of conflicts, all in one. Here is presented an amazing fusion of governmental powers and functions totally repudiating the traditional doctrines of both separation and union of powers.

In the proposed constitutional reconstruction, executive authority has not suffered. The buttressing of the position of the monarch as the possessor of the moderative power, the amplifying of the sphere of jurisdiction of the ministry, the complete disseverance of the cabinet from the Cortes, and the provision that a newly selected premier shall, on general principles, have a five-year mandate are all indicative of the deliberate effort to break with the parliamentary system of the old régime and to avoid, at all hazards, the dissipation of executive authority by excessive rotation in office. Admittedly, the final definition of the relationships between the cabinet and the legislative body is indeterminate and awaits a special law;[11] but the basic principles laid down are such as to forecast the creation of a more vigorous and independent, a largely irresponsible, executive.[12]

[10] Eight elective members out of a total membership of forty-eight will have ten-year terms.

[11] Article 37 of the draft constitution contemplates this.

[12] "Who can doubt," asks a French writer, "that when the dictatorship shall have been stabilized and the political rôle of the corporative groups shall prove more important than their social rôle, the royal government, enjoying a practically absolute power, will know how to avoid having the aspirations of the working classes run contrary to its designs? It would be infantile to believe

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All in all, the constitutional project of the Spanish Directory has much that is Bismarckian about it. It represents the constitutional ideology of a régime of *sangre y hierro*; it represents also an endeavor, in an era of economic transition, to find a new basis for the representation of the major economic interests in Spanish life in strict liaison with the government, as was largely the case in the Bismarckian era in imperial Germany.[13] The Cortes, over which the monarch will have the untrammelled power of dissolution, closely resembles the imperial Reichstag in its legislative capacity and its censorial impotence; the Council of the Kingdom has most of the legal attributes of the former Bundesrat; finally, the sovereign and his ministers are given a fresh lease of authority and almost unlimited war and treaty-making power. That these attributes were not without their utility in the modernizing of imperial Germany may be readily admitted; that they contained in themselves grave dangers stands revealed as the verdict of history.

It is altogether improbable that the reforms proposed will be enacted overnight. Even under a dictatorship, a propitious hour must be sought for every move, however adroit. The recent pronouncements of the Dictator on the fifth anniversary of his *coup* indicate that five more years may be necessary to complete the constitutional transition. While the Assembly still has two more years of life, its term can be prolonged by the king if necessary; this was envisaged in the original royal decree. The present phase of the directorial régime is admittedly an interim one, and the Dictator appears to be quite willing, if necessary, to await the appropriate hour of political high tide to complete his constitutional piloting. Whether under a corporative constitution which will largely nullify traditionally conceived public liberties—as the Directory has in fact continually nullified them—Spain will in due season be enabled to steer a median course between the Scylla of pretorianism and the Charybdis of parliamentary

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the contrary. The corporative state has not been invented save to subject Spain to disciplines whose aim is to rid her of the 'democratic virus.' " Cf. "La nouvelle constitution espagnole," *L'Europe Nouvelle*, 11th year, No. 539 (June 9, 1928), pp. 796-798.

[13] Like Bismarck, and unlike Mussolini, Primo de Rivera has not attempted to make a clean sweep of pre-existing national institutions, but has added or replaced institutionally the minimum compatible with his constitutional plans, and has allowed local and regional autonomy to have free course.

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impotence will depend largely on the moderation and sagacity of the monarch at the bridge and the Dictator at the helm of the ship of state.

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The Soviet System of Federalism. The system of soviet federation established by the constitution of 1923 represents a peculiar inversion of the federative idea. The framers of this instrument of government were faced with the solution of a problem of a complex and conflicting nature. The creators of the new Russian government, the leaders of the Communist party, desired to secure, on the one hand, the establishment of the rule of the proletariat; they hoped to build up a government that should develop into "a complete unity of workingmen of various nations"[1] in "one centralized democratic republic."[2] On the other hand, the former Russian Empire had been made up of numerous nationalities. These distinct nationalities remained under the new Soviet régime and were insistent in their claims to self-government. The creators of the Soviet constitution were, therefore, confronted with the reconciliation of the principle of the rule of the proletariat with the principle of the freedom and self-determination of nationalities. In terms of governmental structure, they attempted to fit together these two incompatible political ideas: the practice of absolutism with the idea of federalism. The bolshevist oligarchs, rabid adepts of centralization, were obliged to acknowledge the rights of the nationalities to a certain amount of independence within the soviet state. The resulting system of soviet federation was written into the constitution of the Union of Soviet Socialist Republics (USSR), which was approved by the Central Executive Committee of the Union on July 3, 1923, and which was ratified by the Second Congress of Soviets in January of the next year.

It is the purpose of this paper to examine the soviet system of federalism to discover the results of this attempt at the reconciliation of absolutism and self-determination. First of all, I shall describe the federal organization of the Union of Soviet Socialist Republics. Then I shall point out how administrative centralization and absolutist

[1] Lenin, *Complete Works*, Vol. XIX, p. 268.

[2] Lenin, *State and Revolution* (Petrograd, 1918), p. 68.

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practice have rendered worthless the constitutional guarantees of self-government to the various nationalities.

The Union of Socialist Soviet Republics (USSR) is a federation and is today composed of six component soviet republics. At the time of the formation of the Union, four member states were included in it: (1) the Russian Socialist Federative Soviet Republic (RSFSR); (2) the Ukrainian Socialist Soviet Republic (USSR); (3) the White-Russian Soviet Socialist Republic (W-R SSR); and (4) the Transcaucasian Socialist Federative Soviet Republic (TSFSR). Since then two more members have entered the Union: the Uzbeck and the Turkmen[3] soviet republics.

The federal idea is further carried out in the organization of the member states of the union. Only two of the component states of the USSR (the White-Russian and the Turkmen republics) are not federations. The RSFSR consisted in 1925 of nine autonomous republics and fourteen autonomous regions. The TSFSR embraces three states: Azerbeidjan, Georgia, and Armenia. The Ukrainian republic contains the autonomous republic of Moldavia. The Uzbeck republic likewise has one autonomous region. Thus the Union of Soviet Socialist Republics is a highly complex federal state, consisting of many states and autonomous regions.

The federal idea is further expressed in the representation of the separate states in the central federative political bodies that play the leading rôle in the political life of the Union. The supreme organ of the soviet government is the General Congress of Soviets elected by all the soviets of the USSR. The town soviets elect one representative for 25,000 electors, while the provincial soviets elect one representative for every 125,000.[4] Thus a town elector equals in voting strength five agrarian electors. This General Congress of Soviets meets usually only once a year, and then for a comparatively short time. Extraordinary sessions may be called, but they are of still shorter duration.

The normal permanent representative body is the Central Executive Committee of the USSR, which consists of two sections—the Council of the Union and the Council of Nationalities.[5] The Council of the Union is elected by the General Congress of Soviets at its ordinary annual session. It consists of 414 members,[6] elected in proportion to the population of the various republics. The RSFSR has three times as

[3] Middle Asia.
[4] Const., Arts. 8 and 9.
[5] Const., Art. 13.
[6] At the present time the Council of the Union has a few more members.

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many inhabitants as all the other republics put together, and consequently a great majority of the members of the Council of the Union are representatives of that division of the nation.

The Council of Nationalities, which is supposed to defend the rights of the various soviet republics, consists of the representatives of the member republics of the USSR and of the deputies of the autonomous republics. Each member republic sends five representatives, and each autonomous state sends one deputy. The members of the Council of Nationalities are admitted to office only upon the approval of the General Congress of Soviets. Since there are many more autonomous republics within the RSFSR than within all the other members of the Union combined, the representatives of the RSFSR control a majority of the votes in the Council of Nationalities.

The Council of the Union and the Council of Nationalities resemble, to a certain slight degree, two houses of a legislature. Legislation is supposed to be approved by both councils. In case of disagreement between the two on any legislative or administrative question, a special mixed conciliatory committee is established. This committee works out a text of the law or decree acceptable to both councils. If this conciliatory committee is unable to reach an agreement, the controversy is submitted to the united general assembly, consisting of both the Council of the Union and the Council of Nationalities. If in the general assembly a majority of the members of either council votes against the proposed bill, it must be laid before the session of the General Congress of Soviets for a final solution in case either council demands it.

Not only are the member states of the Union represented in the political organs of the federation, but they are apparently granted by the constitution ample political rights and privileges. Article 3 of the constitution declares that member republics of the Union are sovereign states and can independently exercise their sovereign rights so far as these do not conflict with other articles of the constitution. The separate republics have always "the right freely to leave the Union;" this right is solemnly acknowledged by Article 4 of the constitution.[7] Finally, the borders of the separate republics can be changed, restricted, or abolished only with the consent of all the member republics of the Union.

[7] P. Gronski, "Can the USSR be a Subject of International Law?," *Recollections of Soviet Russia* (Paris, 1924), pp. 103–104.

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This federal system does not, however, provide actual security for the nationalities within the Union. Membership in the Council of the Union is apportioned according to the population of the various republics; consequently, the RSFSR, with three-fourths of the total population, has a great majority of the membership of this council and can outvote all the other republics combined. Nor does the Council of Nationalities adequately defend the rights of the various soviet republics. Here, too, the RSFSR, because of its large number of autonomous republics, has more than half of the seats. The Council of Nationalities, it must be added, is not entirely equivalent to the upper chamber of other federal governments; if the Council of Nationalities disagrees with the measures approved by the Council of the Union, the questions are submitted for decision to the General Congress of Soviets, a large majority of which is controlled by a single member of the Union, the RSFSR.

The division of powers between the Union of Soviet Socialist Republics and the component states of the Union further indicates the small sphere of activity permitted to the various republics and demonstrates the lack of self-determination on the part of the members of the federation. Article I of the Union constitution enumerates the powers that are within the competence of the supreme organs of the Union. The powers granted to the federal government cover the following important branches of legislation and administration: 1. The whole system of foreign policy; international relations; treaties; declaration of war; and signing of peace. 2. Internal and foreign loans; complete control of foreign trade; home trade policy; the general plan of state economic activities; federal taxes; and the Union budget. 3. The organization and control of the army and navy of the USSR. 4. Union land policy; the system of exploitation of mines, forests, and waters; and legislation on migration. 5. Legislation concerning the organization of and the procedure in the courts; and legislation concerning civil and penal law. 6. Labor legislation and general policy; public education; and public health. 7. System of weights and measures; and Union statistics. 8. Legislation concerning citizenship in the Union and concerning foreigners in the USSR. 9. Amnesty.

This long enumeration of the affairs which are placed within the competence of the Union proves that all the most vital and important branches of legislation and administration belong to the central federal institutions. The separate republics and nationalities are permitted to handle only matters of secondary importance and local interest.

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To evaluate accurately the position of the nationalities in the soviet federal system, we must examine with special care the administrative structure of the government. The most characteristic peculiarity of the soviet system of government is its complete union of legislative and administrative powers. The soviet constitution in principle denies the idea of any separation of powers; it likewise denies the prevalence of representative legislative bodies over all other organs of the state. The English theory of the supremacy of Parliament is particularly foreign to the soviet régime. One of the soviet writers, Professor Hoichbarg, outlines what he calls the difference between the bourgeois and the proletarian conception of the state. He says: "Legislation is the temple of a bourgeois state, and law is its idol; the temple of proletariat and socialism is administration, and labor is its religion."[8] The soviet state organs are primarily organs of administration; legislative functions play a second rate rôle. The atmosphere of sovietism is that of administration. In our analysis of the soviet system of federalism, we must consequently pay close attention to the administrative structure and powers of the soviet government.

While the two councils in the Central Executive Committee perform both legislative and administrative functions, they are not permanent bodies. There are other organs of legislation[9] and administration which are in rivalry with, and which exercise greater powers than, these two councils. The two most important of these institutions established by the constitution are the Board, or "Praesidium," of the Central Executive Committee and the Union Council of the Commissars of the People. They do not possess the federal character of the General Congress of Soviets or of the two councils of the Central Executive Committee. They are not made up of representatives of the various member republics. Rather, they form a part of the system of centralization; they have supreme power in the soviet state and represent the interests of the Communist party, which is the real ruler of modern Russia.

The Board of the Central Executive Committee is "the supreme legislative and executive organ of the Union"[10] when both chambers of the Central Executive Committee are not in session. It consists of

[8] See N. Timascheff, *Grundzuge des Sovietrussischen Staatsrechts* (Berlin, 1925), p. 141.

[9] B. Mirkine-Guetzévitch, *La Théorie Générale de l'État soviétique* (Paris, 1928), p. 81.

[10] Const., Art. 29.

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twenty-one members: seven members of the Board of the Council of the Union, seven members of the Board of the Council of Nationalities, and seven members specially elected by the Central Executive Committee. Such a method of election of the members of the Board of the Central Executive Committee leads to a majority control by the representatives of the RSFSR. This Board shares its supreme power with the Union Council of the Commissars of the People. This latter institution is the federal cabinet of ministers of the Union; it has not only executive but legislative powers as well.[11]

The Board of the Central Executive Committee is the most powerful political institution in the whole system of the soviet state. It possesses the supreme controlling power of supervision over the execution of the federal constitution and of the decisions of the General Congress of Soviets and of the Central Executive Committee.[12] This Board has the right to suspend and to abolish decisions of the Union Council of the Commissars of the People and of the commissars of the Union. Its suspending and over-ruling power extends as well to the decisions of the local councils of the commissars of the people in the separate member republics of the Union and over decisions of the representative bodies of the separate republics over the central executive committees and the local congresses of soviets.[13] Thus its supreme power spreads not only over the federal institutions but also over all the local institutions of the component states of the federation. All the soviet governmental organs, local as well as federal, can be entirely paralyzed by the suspending and vetoing powers of this Board. If the actions of the Board are approved by the Central Executive Committee (and this committee is controlled by the RSFSR), the separate member republics cannot enter any complaint against the Board. Under such conditions, the most essential foundation of federalism—a certain degree of independence for the members of the federation in legislation and administration, granted them by the constitution—ceases to exist.

The power of the Board to suspend or reject the decisions of local bodies entirely nullifies the grant of sovereignty to the member republics by the constitution. If every decision of the state organs of the various republics can be set aside by the central government, then

[11] Const., Arts. 37 and 38. *Reikhel, USSR, Ocherki Kostitutsionuykh Vzaimootnosheniy Sovietskikh Respublic* (Moscow, 1928), Vol. I, pp. 78–82.

[12] Const., Art. 30.

[13] Const., Arts. 31 and 32.

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obviously the decision of a separate member of the federation to leave the Union can be vetoed by the Central Executive Committee and its Board. It becomes quite clear that the right of secession guaranteed by Article 3 of the constitution and the obligation of the central government to protect the sovereignty of the separate republics are rights and obligations which do not exist in reality.

The permanent and vigilant control of the Board, and the entire subordination of the local soviet institutions to the will of the Board, reduces the separate member republics of the Union to the status of mere territorial divisions of a centralized, non-federal state. The various soviet republics of the USSR, in reality, present a closer resemblance to the Russian provinces of the czarist régime than to members of a federation. Behind this sumptuous façade of federalism is concealed the true soviet system; the real power of government is concentrated in the hands of the Central Executive Committee of the Union and of its Board. These are the two institutions through which the dictatorship of the Communist party in the soviet federation is realized.

The detailed administration of the various state activities likewise comes within the purview of the central soviet organs. There exist ten "commissariats of the people" (ministries) intended for the administration of the Union and of the separate republics. Five of them handle problems of exclusively federal concern. These are the commissariats of foreign affairs, army and navy, foreign trade, ways of communication, and posts and telegraphs.[14] The other five deal with questions of local, as well as of national, importance. These so-called "united" commissariats handle public economy, the supply of provisions, labor, finance, and workmen's and peasants' inspection.[15] These last five commissariats are so organized that the local commissariats of the separate republics are their subordinate and dependent organs. The central federal commissariats direct the activities of the local bodies, with the result that the local commissariats merely carry out the directions of the central body.[16] These local commissariats are in no way the organs of the separate republics; they are in reality local branches of the central federal commissariats. For the purpose of supervision, each of the five "united" commissariats sends its special superintendents to each of the separate republics.

[14] See Evtikhieff, *Osnovy sovietskago administrativnago prava* (Moscow, 1925), p. 91.

[15] *Ibid.*, p. 97; Const., Art. 50.

[16] Const., Art. 54.

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Moreover, while the separate republics have commissariats of the people, presumably under the control of the separate republics, these bodies are under the vigilant supervision of the federal commissariats. The constitution provides for special commissariats for the administration of purely local affairs in the separate republics; these handle local problems of agriculture, finance, supply of materials, labor, interior, justice, workmen's and peasants' inspection, public education, public health, and social aid.[17] However, many of these commissariats are controlled by the central institutions and in their activities must carry out the directions of the corresponding federal commissariats.

This analysis of the administrative machinery of the soviet system indicates the concentration of control in the hands of a few. All the commissariats of the people in the USSR and in the separate republics may be classified in three groups: (1) federal commissariats, (2) "united" commissariats, which have local as well as federal organs, and (3) purely local commissariats supervised by the federal agencies. This complicated system is created especially for the purpose of handing over to the central soviet administrative organs the entire power of directing the activities of the local commissariats.

A close analysis of the articles of the soviet constitution leads to quite an unexpected conclusion: the soviet federation is not at all a normal type of federation. A normal federation aims to establish the participation of the separate members of the federation in the federal power, to afford a number of legislative and executive rights to the members, and to protect their competence from the continual interference of the central government. Only if these necessary conditions are thoroughly observed can there be established that harmonious combination of rights, duties, and competences which is characteristic of a federal system.

The Communist "fathers of the soviet constitution" have emphatically stressed the rights of the nationalities. In the declaration announcing the formation of the Union of the Soviet Socialist Republics they solemnly stated that "only within the precincts of the soviet camp, and only under the proletarian dictatorship which has united around itself the majority of the population, did it become possible to uproot the system of the oppression of nationalities, to create the atmosphere of mutual confidence, and to lay the foundation of the brotherhood of peoples." But these solemn promises are only revolutionary phrases—so customary for the Communist leaders—behind which reactionary political activities are concealed. "The atmosphere

[17] Const., Art. 67.

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of mutual confidence" is in reality nothing but the right of the central federal government to supervise the activities of the individual members of the federation; and "the foundation of the brotherhood of peoples" is nothing more than the denial of the rights of the member republics of the soviet federation to the least display of independence. These promises are in complete contradiction with the administrative centralization practiced by the soviet régime.

Moreover, many of the articles of the constitution clash with one another as to the legal position of the separate republics within the Union. The sovereignty of the republics is admitted in theory, but in practice they cannot make any independent decisions. The Council of Nationalities is supposed to guard the interests and rights of the member republics; but the Council is controlled by a single state of the Union, and its powers exist on paper only. The separate republics have their own political institutions, but they are subjected to the ever vigilant supervision of the central government.[18]

The entire constitution of the USSR is woven of mutually contradictory provisions. The soviet federation is a rather primitive piece of machinery—machinery designed, not to guard, but to restrict, the rights of the separate republics. The idea of federalism is practically nullified by the system of centralization working under the cover of the federal soviet constitution. The intricate political task of the Communist authors of the constitution demanded the harmonizing of federalism and centralization. Two political ideas and two political programs collided: the idea of freedom for the nationalities with the idea of proletarian supremacy, and the program of federalism with that of centralization. From this collision there was born into the world a peculiar constitutional charter—federal in name, a centralized administrative dictatorship in practice.

PAUL P. GRONSKI.[19]

International Institute of Public Law, Paris.

[18] Cf. H. N. Brailsford, *How the Soviets Work*, p. 108. "In externals these republics look like sovereign states which have come together, as the preamble puts it, for mutual protection and economic benefits. Their sovereignty, indeed, is recognized in a clause which, bluntly and without reservations or conditions of any kind, grants the right of any constituent republic to secede from the Union. When one comes to examine the constitution, this impression vanishes. For there is not one department in which, either expressly or silently, the absolute autonomy of the republics is recognized. Over all of them spreads the 'general principle' of the common model. The Soviet Union is the most centralized federation in existence."

[19] Formerly professor at Petrograd.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

Professor Frank G. Bates, on leave of absence from Indiana University during the second semester, will spend the spring in Italy and England, and during the summer will teach at Cornell University.

Miss Edith C. Bramhall, formerly associate professor of history and politics, has been made professor of political science and head of the newly created department of political science at Colorado College.

Professor W. W. Willoughby is on leave from the Johns Hopkins University during the present semester and will spend the time in travel, chiefly in the Mediterranean area. A new and greatly enlarged edition of his *Constitutional Law of the United States,* published originally in 1910, will soon appear in three volumes.

Mr. William Watson has been assigned by the National Institute of Public Administration to accompany Professor E. W. Kemmerer, of Princeton University, on his mission to organize the finances of the Chinese Nationalist government. Mr. Watson will be assistant expert in accounting and fiscal control.

Dr. Carl E. McCombs, of the National Institute of Public Administration, is making a survey of hospital administration in Buffalo.

Professor W. Leon Godshall, of Union College, will give courses during the coming summer at the University of Pennsylvania on the relations of Latin America and the United States and the international relations of Asia. His *Tsingtao under Three Flags* is being published by the Commercial Press at Shanghai.

Professor W. E. Binkley, of Ohio Northern University, has been awarded a prize of five hundred dollars for an essay entitled "American Institutions." The contest was conducted under the auspices of the Lawyers' Club of the University of Michigan, and the essay will be published in the *Michigan Law Review.*

Professor Robert Phillips, of Purdue University, is on leave of absence for the present academic year, and is completing his graduate

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work and giving instruction in American government at the University of Michigan. Mr. Lawrence Preuss has been appointed instructor in political science at the University of Michigan and is completing his graduate work in political science.

Professor James W. Garner, of the University of Illinois, has been in Europe since September. As a member of the staff of the Institut Universitaire des Hautes Études Internationales at Geneva, he has been lecturing on American foreign policy and conducting a seminar on nationality. He will remain for the Institute's summer session.

Professor Thomas F. Moran, head of the department of history and economics at Purdue University, and long an active member of the American Political Science Association, died at his home in West LaFayette, Indiana, on October 21, 1928. Mr. Moran was a graduate of the University of Michigan and held the doctorate from the Johns Hopkins University. He was the author of several books and contributed frequently to magazines on political and historical topics. His principal works were: *The Formation and Development of the Constitution* (1904); *The Theory and Practice of English Government* (new ed., 1908); and *American Presidents* (new ed., 1928). He also collaborated with Professor James A. Woodburn, of Indiana University, in the writing of a series of texts on history and government.

The second annual session of the Southeastern Citizenship Conference was held at Emory University, Atlanta, on February 12–16. Professor W. F. Dodd, of Yale University, spoke on administrative reorganization in Georgia; Professor Edward J. Woodhouse, of the University of North Carolina, on county government in Georgia, North Carolina, and Virginia; Dr. Walthor Merck, of Hamburg University, on the foreign relations of Germany; and Dr. A. T. Polyzoides, editor of *Atlantis*, on the present European situation.

A two-day institute on American foreign relations was held by the Cincinnati Foreign Policy Association on November 23–24. The topics discussed were: relations with Latin America; our commercial policy and relations; the relations of the United States with the League; and the Kellogg pact. The speakers were Professor Isaac J. Cox, of Northwestern University; Professor J. H. Latané, of the Johns Hopkins University; Mr. Julius Klein, of the Department of Commerce; Professor Paul H. Douglas, of the University of Chicago; Professor Manley O. Hudson, of the Harvard Law School; Dr. Carl Brinkmann, of the

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University of Heidelberg; Professor Quincy Wright, of the University of Chicago; and Mr. John Bakeless, editor of the *Living Age*. In addition, Mr. Timothy Smiddy, minister to the United States from the Irish Free State, spoke at a dinner meeting on conditions in Ireland since the establishment of the Free State. Members of the political science department of the University of Cincinnati were largely instrumental in arranging the program for the Institute.

The fourth session of the Institute of International Relations was held at Mission Inn, Riverside, California, and at the University of Southern California, December 9–14. There were round tables on the new China, Japan, the Near East, the Kellogg peace pact, foreign policies of American political parties, problems of food and population, international commerce and finance, our Latin American policy, reorganization of the Department of State, and three or four other subjects. There were also general conferences on a wide variety of topics, in addition to a half-dozen special evening lectures.

It is reported from Washington that the Civil Service Commission is perfecting an arrangement for personal contact with colleges and universities to meet the competition of private industry for the services of new graduates from technical and scientific courses. Many of the larger private employers send their agents to educational institutions each year to recruit new workers from the graduating classes. Under the plan of the Civil Service Commission, such recruiting for the government will be undertaken by employees of the technical and scientific bureaus who find it necessary to visit the educational institutions from time to time for conference and research.

The creation of a foreign service school, modeled somewhat upon West Point and Annapolis, was recommended in a bill introduced on December 14 by Senator Thomas, of Oklahoma, who favors dividing the course of instruction into two branches, one to prepare applicants for the consular service, the other to prepare for the diplomatic service. The plan calls for a "board of foreign affairs" in the State Department to supervise the school and advise with the President and Secretary of State regarding foreign relations. The board would collect information, and "if not incompatible with the public interest," report to the Congress such information about foreign relations as it should consider necessary. The board would include in its membership the Secretary of State, the Under Secretary of State, the Solicitor of the State De-

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partment, the Secretary of Commerce, the director of the bureau of foreign and domestic commerce, and the chairman and ranking minority members of the Senate foreign relations and House foreign affairs committees. It would have power to employ and fix the salaries and number of professors and instructors in the foreign service school and prescribe the course of instruction.

The American Political Science Association's committee on policy has authorized the establishment, on a limited scale, of a personnel service for college and university teachers of political science. A list of candidates now available for appointment has been prepared and may be had free upon application to Professor William Anderson, University of Minnesota, Minneapolis. All persons who now have the doctor's degree, all who expect to obtain the degree this year, and other qualified persons who wish to be considered for teaching positions in political science in colleges and universities for the year 1929–30 are invited to send their names at once to Professor Anderson. The information submitted will be treated as confidential in the cases in which the applicant so desires.

The scholarly world was shocked by the announcement on December 19, 1928, of the sudden death of M. Léon Duguit, dean of the Faculty of Law at the University of Bordeaux. Heart failure was reported as the cause of M. Duguit's death, which was all the more unexpected in that the venerable jurist possessed what appeared to be a physique remarkably robust for a man approaching seventy. For forty years M. Duguit had been professor of constitutional law at Bordeaux, and for about fifteen, dean of its Faculty of Law. Having sat in his classes, the writer can testify to the brilliance of his teaching, which inspired a veritable school of young scholars not only with a profound respect for his scientific attainments, but with a remarkable personal affection for their *grand maître*. His original contributions to political philosophy and public law are too well known in America to require enumeration. Suffice it to say that it was Duguit's positivist theory of the state, built upon the notion of *la solidarité sociale*, that paved the way for the political theory of pluralism in England, as well as for much of our sociological jurisprudence in America. Thirty years of fruitful writing on the part of the eminent French jurisconsult culminated in his monumental *Traité de droit constitutionnel*, which in the second edition filled five solid volumes. At the time of his death, M. Duguit was preparing a

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third edition of his *Traité*, one volume of which appeared recently. His passing means an immense loss not only to French juristic scholarship, but to the study of public law throughout the Western world.

WALTER R. SHARP.

As was announced in a preliminary circular issued in 1925, the making of a complete subject catalogue of the books and pamphlets in the British Library of Political and Economic Science at the London School of Economics and Political Science was begun three years ago. Since the issue of that circular, the scope of the work has been enlarged so as to embrace other collections in London, in particular the valuable Goldsmiths' Library of Economic Literature belonging to the University of London, certain special collections including rare tracts and pamphlets at University College, and the libraries of the Royal Statistical Society and the Royal Anthropological Institute. The British Library of Political and Economic Science itself includes about 500,000 volumes and 250,000 pamphlets covering, besides economics and political science, the related fields in history, sociology, anthropology, geography, psychology, law, and many other branches of learning; all these 750,000 items (except those in the Edward Fry Library of International Law, for which a separate complete catalogue already exists, and a number of unimportant pamphlets which are catalogued in bulk) will be separately dealt with in the new catalogue. The other collections supplement the British Library of Economic and Political Science in many ways. An important feature will be the cataloguing under their subjects of nearly all the official publications of all the important countries of the world. The subject catalogue as a whole, although it naturally falls short of including all the literature of the social sciences, will, it is hoped, be the best single guide to that literature and an almost indispensable help to students in that field. With this in view, it has been decided, not simply to make the joint catalogue of the libraries named in card form, but to print and publish it for use elsewhere as a "London Bibliography of the Social Sciences." Its compilation is now so far advanced as to justify the hope that printing may be begun in the first half of 1929, and the work published and issued before the end of that year. It will be published in four volumes, containing roughly 5,000 large quarto pages. Three volumes will form an alphabetical subject catalogue, following the classification scheme of the Library of Congress, while the fourth will contain an alphabetical index of authors.

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The annual report of the American Council of Learned Societies for 1928 is contained in Bulletin No. 9, published at the executive offices in Washington in December. The matters of chief interest to political scientists are (1) the creation of an advisory board to receive and consider research projects referred to it by the Council; (2) the setting up of a joint committee to facilitate delimitation of functions, and good working relations generally, with the Social Science Research Council; (3) the holding of the annual conference of secretaries of the constituent societies; (4) announcement of the impending publication of the survey of American learned societies prepared by the permanent secretary, Dr. W. G. Leland; (5) publication during the year of the report of the survey of research conducted by Professor Frederic A. Ogg; and (6) publication late in the year of the first volume of the twenty-volume *Dictionary of American Biography*, edited by Dr. Allen Johnson. Many other activities relating primarily to the fields of philosophy, philology, history, and archæology are described. Copies of the report may be obtained from the Council's executive offices at 907 Fifteenth Street., Washington, D. C.

The fourth annual report of the Social Science Research Council, covering the period from July 1, 1927, to the close of the Hanover Conference on September 1, 1928, has been distributed to members of the constituent organizations. It is therefore unnecessary to comment on the document here. One paragraph from the general survey of the year may, however, be quoted: "Steady development has marked every sector of the Council's work. The deliberations of the Council and its committees have been characterized by a healthy critical spirit which bids fair to prevent any lapse into routine administration; a new series of research fellowships in agricultural economics and rural sociology has been established to meet the urgent need for trained personnel in this field; the appointment of a permanent fellowship secretary, coördinating the Council's two groups of fellowships and its grants-in-aid, insures increasingly thorough work both in developing young research personnel and in furthering the researches of mature scholars; the possibility of long-term planning in connection with the growing program has been strengthened by the decision to appoint a permanent salaried president of the Council, and also by the decision to add to the central administrative staff a full-time research assistant; plans have been approved to widen the Council's membership through the addition of a limited number of members-at-large to those appointed by the seven constituent associations;

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increasing coöperation with other research bodies, both in this country and abroad, has developed; and last, but not least in importance, the first substantial contribution toward financing the Council's general work has been received from a private individual, supplementing the generous support of various foundations." Copies of the report may be obtained from the Council's offices at 50 East Forty-second St., New York City.

The movement for permanent registration of voters has been greatly advanced because of the unusually large vote cast in the presidential election of last year, serving to emphasize the necessity for a sound registration system. Bills providing for permanent registration will be introduced in from eight to ten states at the legislative sessions starting in January. The National League of Women Voters has placed this subject upon its list for legislative action, and the state leagues of Indiana, Michigan, Ohio, and other states have taken active steps toward securing such a law. The state of Indiana does not have any registration of voters at present, the previous law upon the subject having been repealed in 1927. The League of Women Voters of Indiana has prepared a sound permanent registration bill, which it is sponsoring by public meetings in various parts of the state. In Michigan the state commission appointed by the governor to revise the election laws is considering a permanent registration bill backed by the League of Women Voters and several other civic organizations. The Citizen's League of Cleveland, along with the Ohio Institute and the state League of Women Voters, will promote a bill in Ohio. Permanent registration will be urged in Missouri by the Kansas City Public Service Institute, although its bill may apply only to Kansas City. The Philadelphia Bureau of Municipal Research will continue its movement for permanent registration at the present session of the legislature. Two years ago the New York State Election Commissioners' Association formed a special committee upon the subject, but the bill which this committee introduced in the last legislative session was lost during the closing rush. It will probably be introduced again this year. In New York it will be necessary to amend the state constitution to provide for permanent registration. The present permanent registration law in Kentucky has worked badly, particularly in Louisville, where serious frauds have taken place. The League of Women Voters of the state is proposing a sound law, though the next session of the legislature will not take place until 1930.

J. P. HARRIS.

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Encyclopedia of the Social Sciences. In June, 1928, a meeting of the Joint Committee on the Encyclopedia of the Social Sciences was held at New York, at which informal reports on the progress of the work were presented and various problems as to the plan and procedure were discussed. On December 7 the annual meeting of the board of directors was held in New York, at which a report of progress was presented by the editor-in-chief, Professor Edwin R. A. Seligman, and the budget for the year was approved.

During the year the task of selecting the titles of articles has been actively prosecuted with the coöperation of specialists in the various fields, and suggested outlines of articles have been prepared for the guidance of contributors. Plans as to biographical articles have also received attention. It is proposed to give such articles about one-fifth of the space. Approximately one half of the first volume will be devoted to introductory material, including a series of chapters on the development of the social sciences. Large progress has been made also in the selection of contributors of particular articles, and definite arrangements have been made for a considerable part of the work.

Arrangements for publication have been made with the Macmillan Company, and plans have been completed as to the format and make-up of the volumes. The price of the work will be seven dollars and a half for each of the fifteen volumes, with a forty per cent rebate to members of the constituent societies who send in their subscriptions now.

The staff, under the immediate direction of Dr. Alvin Johnson, includes twelve experts (six men and six women) who are doctors of philosophy, besides secretaries, typists, and file clerks—a total of twenty-five persons, occupying about a dozen rooms. It is hoped to have the first volume ready in September, 1929, and that other volumes will be issued at intervals of about four months.

JOHN A. FAIRLIE.

Social Science Abstracts. The long-projected and carefully-planned journal, *Social Science Abstracts*, will make its appearance at the beginning of March under the editorship of Dr. F. Stuart Chapin. The purpose of the journal is to provide brief summaries of new material as promptly as possible after publication and thus to help workers in the social sciences keep abreast of the bewildering and rapidly increasing output of new work. The fields to be covered

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include economics, sociology, statistics, political science, history, cultural anthropology, and human geography. Each issue will fall into two main parts, entitled, respectively, Methodological Materials (including historical, theoretical, statistical, and philosophical method in each of the disciplines) and Systematic (Content) Materials, arranged according to the several disciplines. A provisional scheme of rubrics, arrived at in each instance only after preliminary work by special committees, followed by a large amount of consultation, has been adopted for each discipline, subject to such changes as experience may prove desirable. In political science the main divisions are: political theory, jurisprudence, municipal public law, government (historical and descriptive), political parties and politics, governmental processes, the public services, international law, international organization, and international relations since 1920. A staff of some thirty foreign advisers, a much longer list of American consulting editors, and over eight hundred abstractors has been built up, with an estimated capacity of three thousand abstracts a month. Members of the board of directors mentioned below will also serve as division editors. Abstracts will be made of articles, beginning with July 1, 1928, and also of books, monographs, pamphlets, serials, etc., beginning in 1929.

Social Science Abstracts will be issued monthly, and in the first year at least 15,000 abstracts will be printed, varying in length from a mere citation of title in the case of less important articles to several hundred words in that of important contributions printed in inaccessible journals or in the less familiar foreign languages. Abstracts will be cross-referenced in each issue, and elaborate annual indexes will be published. Periodicals in all languages—a partial list drawn up during 1928 includes several thousand—will be searched for significant materials, thus giving the service a world-wide character. The journal will be published under the general auspices of the Social Science Research Council and under the immediate control of a board of directors consisting of Dr. Isaiah Bowman, and Professors Davis R. Dewey, Ellsworth Faris, Carlton J. H. Hayes, Frederic A. Ogg, Frank A. Ross, Clark Wissler, and Robert S. Woodworth. The subscription rate is six dollars a year. Subscriptions and other communications are to be addressed to *Social Science Abstracts*, 611 Fayerweather Hall, Columbia University, New York City.

FREDERIC A. OGG.

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International Institute of Public Law.[1] The 1928 meeting of the International Institute of Public Law held its first session on October 20 in the Salle des Fêtes of the Faculty of Law of the University of Paris. There was at the beginning an administrative session presided over by M. Gaston Jèze. The mandate of the existing Council of Direction was extended and certain matters of internal organization were considered. The project dealing with the internal regulation of the Institute, presented by the secretary-general, M. Mirkine-Guetzévitch, was approved. The secretary-general read a report upon the matter of the publication of an Annuaire de l'Institut which should contain, each year, a report of all constitutional changes, the principal measures concerning public law, and the principal decisions, both administrative and constitutional, as well as political changes, in all countries. The annual is to be provided with an analytical table and will form a unique and necessary instrument of work for all persons interested in public law. The Assembly adopted this project.

In the afternoon of the same day the first plenary session was opened, under the presidency of M. Jèze. The president welcomed the members and thanked particularly the foreign members who had come from many different countries. M. Mirkine-Guetzévitch read the minutes of the morning session and informed the Assembly of the basis upon which the annual of the Institute would be issued. The Assembly decided to hold its next session during the last week of June, 1929, and the Council was charged with fixing the exact date. The following reports are to be presented for discussion at that meeting:

(1) The rule of law and the objective law; reporter, M. Duguit.[2] 2) Theoretical and practical value of the principle of the separation of powers and its application in the public law of modern states; reporter, M. Redlich. (3) The importance of the rules of constitutional law for the conclusion and ratification of international treaties; reporters, MM. Politis and Schücking. (4) The crisis of representative and parliamentary governments in modern democracies; reporters, MM. J. Barthélemy and A. Lawrence Lowell. (5) The question of the referendum and the popular initiative; reporters, MM. Fleiner, Garner, Kelsen, and Thoma. (6) The political rôle of parliamentary commissions; reporters, MM. J. Barthélemy, Kaufmann, Merkl, and Rolland.

[1] Translation furnished by Eldon R. James, Law School of Harvard University.

[2] Professor Duguit died in December, 1928.

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In accordance with the proposal of M. Alvarez, the Assembly decided to make a critical examination of the Declaration of the Rights of Man, and at the suggestion of M. Jèze, the different individual liberties will be studied, commencing with property. M. Gascon y Marin was designated as one of the reporters of this commission, the other reporters and the members of the commission to be named later.

The president declared the report of M. Kelsen upon the jurisdictional sanction of constitutional principles open for discussion. The reporter made a short résumé of his report, and in the ensuing discussion MM. Barthélemy, Duguit, Gascon y Marin, Jèze, Kelsen, and Thoma took part. The second plenary session was held on October 22, M. Fleiner presiding. This session was devoted to the discussion of the report of M. Jèze upon the juridical significance of public liberties. M. Jèze gave a résumé of his report, which was discussed by MM. Barthélemy, Duguit, Gascon y Marin, Kelsen, Nolde, Politis, and Thoma.

These two discussions, which were quite animated, will be contained in special publications of the Institute, and because of the competence of the speakers and the interest of the subjects dealt with, have given to the labors of the Institute a special importance. The discussions were in French, except for some replies by M. Kelsen, which were in German.

After the discussion, M. Jèze resumed the chair. Thanking the foreign members, and remarking upon the interest displayed in the scientific work of the Institute, he closed the session. The session had a truly international character and a high scientific value. By reason of the competence of its members and the importance of the subjects studied, the International Institute of Public Law has become a veritable center of the science of European and American public law.

Annual Meeting of the American Political Science Association. The twenty-fourth annual meeting of the American Political Science Association was held at the Stevens Hotel, Chicago, December 27–29, 1928. The registration was 235, as compared with 292 at Washington in 1927, and 157 at St. Louis in 1926.[3] The program was as follows:

[3] The total registration of the American Economic Association and associated organizations was 1,316.

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THURSDAY, DECEMBER 27

10:00 A.M. **Round Table Meetings.**

1. *Problems of Personnel Administration.*
   Fred Telford, Bureau of Public Personnel Administration, Washington, D. C., Director
   Discussions led by: W. F. Willoughby, Washington, D. C.; Luther Gulick, Director of the National Institute of Public Administration, New York City; E. O. Griffenhagen, Chicago; Morris B. Lambie, University of Minnesota; Edward A. Cottrell, Stanford University; Charles P. Howard, Boston, Mass.; Charles P. Messick, Chief Examiner and Secretary of the New Jersey State Civil Service Commission; L. M. Short, University of Missouri
2. *Administrative Law.*
   John Dickinson, Princeton University, Director
   Discussions led by: Eleanor Bontecou, John P. Comer, James Hart
3. *Administration of Foreign Offices.*
   Raymond L. Buell, Foreign Policy Association, New York City, Director
4. *Comparative Party Politics.*
   John M. Gaus, University of Wisconsin, Director
   Discussions led by: Harold S. Quigley, University of Minnesota; Kenneth Colegrove, Northwestern University; Walter R. Sharp, University of Wisconsin; Robert C. Brooks, Swarthmore College; Samuel Harper, University of Chicago; James K. Pollock, University of Michigan
5. *Teaching of Government.*
   O. Garfield Jones, University of Toledo, Director
   Discussions led by: Charles A. Beard, New Milford, Conn.; Clarence A. Berdahl, University of Illinois; Russell Story, Pomona College; W. E. Mosher, Syracuse University
6. *Political Corruption.*
   Peter H. Odegard, Williams College, Director
   Discussions led by: Orville S. Poland, New York; Brooke Graves, Pennsylvania; Harold F. Gosnell, University of Chicago; Stewart Lewis, New Jersey Law School
7. *Municipal Government.*
   Ralph Boots, University of Pittsburgh, Director
   Discussions led by: Thomas H. Reed, University of Michigan; Martin L. Faust, University of Pittsburgh; L. E. Carter, Cleveland Foundation; Joseph T. Miller, Pittsburgh; R. A. Egger, University of Michigan; H. K. Beyle, Syracuse University; E. S. Griffith, Syracuse University; F. N. MacMillan, Milwaukee; C. H. Wooddy, Chicago; W. B. Graves, Temple University; J. G. McGoldrick, Columbia University; C. C. Hubbard, Wheaton College; W. A. Gray, Municipal Administration Service, Kansas City; J. C. Charlesworth, University of Pittsburgh

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12:30 P.M. **Subscription Luncheon.**
Presiding officer. Jesse S. Reeves, University of Michigan
The Constitutional Crisis in Yugoslavia
Charles A. Beard, New Milford, Connecticut.

2:30 P.M. **General Session.**
Presiding officer: Arthur N. Holcombe, Harvard University
Political Incidence of Standardization in Industry
P. G. Agnew, Secretary, American Standards Association, New York
Political Equalitarianism and Democracy
T. V. Smith, University of Chicago
Discussion: Carl Brinkmann, University of Heidelberg, Germany

3:00 P.M. **Meeting of the Executive Council and Board of Editors.**

8:00 P.M. **Presidential Addresses.** Joint meeting with the American Economic Association and the American Statistical Association.
Presiding officer: Silas H. Strawn, Chicago, Illinois
The Guidance of Production in a Socialistic State
Fred M. Taylor, President of the American Economic Association
Perspectives in Political Science, 1903–1928
Jesse S. Reeves, President of the American Political Science Association
What Price Prosperity.
Carl Snyder, President of the American Statistical Association

FRIDAY, DECEMBER 28

10:00 A.M. **Round Table Meetings.** As indicated for Thursday

12:30 P.M. **Subscription Luncheon.**
Presiding officer: Benjamin F. Shambaugh, State University of Iowa
Report of Policy Committee
Thomas H. Reed University of Michigan
Report of Association's Representatives on the Social Science Research Council
Charles E. Merriam, University of Chicago

2:30 P.M. **Local Government.**
Presiding officer: Kirk H. Porter, State University of Iowa
Campaign Expenditures
Edward M. Sait, Pomona College
State Supervision of Local Finances
Ivan L. Pollock, State University of Iowa
Special Municipal Corporations
F. H. Guild, University of Kansas

4:15 P.M. **Annual Business Meeting of the Association.**
Presiding officer: Jesse S. Reeves, University of Michigan
Annual report of the Secretary-Treasurer and of the Managing Editor of the *American Political Science Review.* Election of officers for 1929.

8:00 P.M. **Open Meeting.**
Presiding officer: Jesse S. Reeves, University of Michigan
Political Science in a Technical Civilization

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Glenn Frank, President of the University of Wisconsin
Crime in the Modern City
Frank J. Loesch, Chairman of the Chicago Crime Commission

SATURDAY, DECEMBER 29

10:00 A.M. **Round Table Meetings.** As indicated for Thursday
12:15 P.M. **Joint Luncheon with the Association of American Law Schools.**
Presiding officer: Thomas Reed Powell, Harvard Law School
Piedpoudre or Small Claims Courts
Gustav L. Schramm, University of Pittsburgh
Criminal Justice in the Minor Courts
Harry Olson, Chief Justice of the Municipal Court, Chicago

The Secretary-Treasurer reported a net increase of 80 in membership during the year, the total membership on December 15 being 1,746, of whom 49 were life members.

The balance sheet, and the operating account for the fiscal year December 15, 1927, to December 15, 1928, were presented by the Secretary-Treasurer as follows:

BALANCE SHEET
December 15, 1928

Assets		
Cash on Hand—Operating Fund:		
Cash in Bank—Checking Account	$ 567.05	
Petty Cash	1.15	
Savings Account	1,200.00	
		$1,768.20
Trust Fund:		
Savings Account	$ 559.44	
U. S. Treasury Bonds ($1500.00 par value)	1,537.81	
		$2,097.25
Accounts Receivable—Members' Dues:		
One year unpaid	$ 688.00	
Two years unpaid	448.00	
		$1,136.00
Accounts Receivable—Index, Publications, etc.		157.72
Total Assets		$5,159.17
Liabilities and Surplus		
Dues Advanced by Members		$1,124.00
Surplus of the Association		4,035.17
Total Liabilities and Surplus		$5,159.17

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Operating Fund

Cash Receipts and Disbursements for the Year Ending December 15, 1928

Receipts in 1928:		
Dues Collected from Members	$6,482.75	
Special Contributions	734.75	
Sale of Publications	454.36	
Advertising	365.70	
Sale of Index	548.02	
Total Receipts		$8,585.58
Cash on Hand—December 15, 1927		1,408.96
Total Cash Available		9,994.54
Disbursements in 1928:		
Review—Printing	$4,631.46	
Review—Reprints, Postage, etc	387.29	
Managing Editor—Miscellaneous Expense	509.06	
Managing Editor—Traveling Expense	67.19	
Honorariums	217.00	
Secretary and Treasurer—Clerical and Stenog	748.75	
Secretary and Treasurer—Stat., Print., and Postage	146.31	
Secretary and Treasurer—Traveling Expense	46.36	
Secretary and Treasurer—Miscellaneous Expense	310.21	
Dues—American Council of Learned Societies	83.30	
Index Cost	586.12	
Equipment	11.90	
Representative, Enc. of Soc. Sciences	99.45	
Annual Meeting Expense	266.20	
Audit and Accounting System	86.00	
Miscellaneous	29.74	
Total Disbursements		$8,226.34
Cash on Hand—December 15, 1928		$1,768.20
Consisting of:		
Cash in Savings Account		$1,200.00
Cash in Checking Account		567.05
Petty Cash		1.15
		$1,768.20

The estimates for 1929 called for a balance and receipts of $10,418.20 expenditures of $8,928.00, and a balance on December 15, 1929, of $1,490.20.

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The annual business meeting of the Association was attended by more than 100 members. Its most significant action was the adoption of the report of the Committee on Policy, which is presented elsewhere in this number of the *Review*.[4] The Association also transacted other business of importance:

Article III of the constitution was amended to read as follows:

There shall be four classes of members of this Association:

1. *Annual members.* Any person may become a member of this Association upon payment of $5.00, and after the first year may continue such by paying the annual dues of $5.00.

2. *Sustaining members.* Any person paying annual dues of $10.00, or more, shall be a sustaining member of this Association.

3. *Life members.* Any person paying dues of $100.00 in a lump sum, or in five annual installments of $20.00 each, shall be a life member of this Association, exempt from annual dues.

4. *Associate members.* Any graduate or undergraduate student registered in a college or university may become an associate member of this Association upon payment of $3.00, and after the first year may continue such as long as he is so registered, by paying annual dues of $3.00.

Each member shall be entitled to a copy of each number of the *American Political Science Review* issued during his membership.[5]

The Association approved the action of the Executive Council in voting the additional sum of $250.00 for editorial assistance, and an annual honorarium of $600.00 for the managing editor of the *Review*. In voting this honorarium, the Council expressed the feeling that this sum was not regarded as adequate compensation for the managing editor, but rather that the appropriation of it was a definite step toward providing such compensation.

Announcement was made of the resignation of Professors W. W. Willoughby and Bruce Williams as members of the Board of Editors of the *Review* and the election by the Executive Council of Professors Russell M. Story and Leonard D. White to serve in their places. The other members of the board were reëlected.

Officers of the Association for 1929—nominated by a committee consisting of Dean Isidor Loeb, chairman, and Professors F. G. Bates,

[4] See p. 184 below.

[5] Article III formerly read as follows: Any person may become a member of this Association upon payment of $4.00, and after the first year may continue such by paying the annual dues, amounting to $4.00. Life membership may be acquired by a payment of $75.00 in a lump sum, or in five annual installments of $15.00 each.

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Clyde L. King, F. A. Middlebush, and Graham H. Stuart—were elected, as follows: president, John A. Fairlie, University of Illinois; first vice-president, William Anderson, University of Minnesota; second vice-president, E. A. Cottrell, Stanford University; third vice-president, S. Gale Lowrie, University of Cincinnati; secretary-treasurer, J. R. Hayden, University of Michigan.

Members of the Executive Council for the term ending December, 1931, were chosen as follows: Kenneth Colegrove, Northwestern University; E. W. Crecraft, University of Akron; C. E. Martin, University of Washington; W. E. Mosher, Syracuse University; and F. M. Russell, University of California. Professor William Anderson, having been elected first vice-president, resigned as a member of the Council, and Professor J. Catron Jones, of the University of Kentucky, was elected to fill the unexpired portion of the term.

Dr. Charles A. Beard introduced, and Professor A. R. Hatton supported, the following resolution, which was unanimously adopted by the Association:

"WHEREAS, during the recent investigation of public utility companies under the auspices of the Federal Trade Commission an impression has been given to the public that certain universities and university professors have been receiving funds improperly for the purpose of carrying on propaganda in favor of the said utility companies,

Be it resolved by the American Political Science Association at its annual meeting in December, 1928: That the American Association of University Professors be respectfully requested to inquire into the foundation for such charges against universities and university professors, report to this Association their findings in relation thereto, and recommend to this Association standards of professional ethics applicable to such cases.

The Association also unanimously adopted a resolution commending the pending program for the expansion of the publications of the Department of State.[6]

Resolutions were unanimously adopted thanking Professor S. Gale Lowrie, chairman, and the other members of the committee on program, and Professor Kenneth Colegrove, chairman, and the other members of the committee on local arrangements, for their excellent preparations for the meeting.

J. R. HAYDEN, *Secretary.*

American Political Science Association—Report of Committee on Policy. The Committee on Policy, succeeding a preliminary com-

[6] See p. 77 above.

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mittee appointed in 1925, was created at the St. Louis meeting of the Association in 1926. Dr. Charles A. Beard was the first chairman, but after preparing a tentative program, which ultimately became the basis for the work of the Committee, he was obliged by absence from the country to resign and was succeeded by Professor Thomas H. Reed, of the University of Michigan. In the fall of 1927 the Committee secured from the Carnegie Corporation a grant of $7,500 for the purpose of making a survey of the field of political science activity and the present and possible future place of the Political Science Association therein. To carry out this purpose, the field to be covered was divided among the members as follows: conditions favorable to creative work in political science, Charles A. Beard; research in politics, Charles E. Merriam; research in international relations, Pitman B. Potter; research in public administration, W. F. Willoughby; financing mature scholars, Russell M. Story; publication (other than the *Political Science Review*), John A. Fairlie; the *Political Science Review*, Frederic A. Ogg; instruction in colleges and universities, William B. Munro; instruction in normal schools, engineering schools, etc., Earl W. Crecraft; training for public service, Thomas H. Reed; personnel service, William Anderson.

Reports on most of these subjects have now been completed and distributed among the members of the committee. The committee has held four meetings, at Washington in connection with the 1927 meeting of the Association, at Iowa City in connection with the summer meeting of the Council in 1928, at New York on December 1, 1928, and at Chicago on December 26, 1928. As the result of its deliberations the committee formulated the following resolutions, which, upon being presented to the Association at the Chicago meeting, were duly adopted:

1. *Resolved:* That provision should be made for an executive director of the American Political Science Association, with suitable compensation and clerical aid; and that the executive director should be assisted by such committees as may be organized upon research, publication, personnel, membership, education for citizenship in the schools and adult education in citizenship, and for other purposes to be determined.

2. *Resolved:* That it should be the duty of the executive director, with the approval of the committee on research, to propose projects for research, and to receive propositions for research from members of the Association, from citizens, and from other associations, and

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with the approval of the committee to promote such research projects by coöperation with universities and other research agencies and by raising funds independently for such research projects as are not otherwise financed.

3. *Resolved:* That it should be the duty of the executive director to keep a record of research work being done in political science, including doctoral dissertations and other projects.

4. *Resolved:* That it should be the duty of the executive director to study opportunities for employment in official and unofficial public service as well as in colleges, to maintain a roster of personnel available for such work, and to supply colleges, universities, other agencies, and individuals with information concerning opportunities for such employment.

5. *Resolved:* That it should be the duty of the executive director, with the advice of the committee on publication, to approve such projects as may be worthy of publication and to promote their publication by raising funds or by coöperation with publishing houses or with universities, and by other methods.

6. *Resolved:* That it should be the duty of the executive director to enlarge and strengthen the membership of the American Political Science Association. (The proper performance of this function may involve the transfer to the office of the executive director of certain functions now performed by the secretary-treasurer of the Association, in which case the Association will defray the expenses of such functions from its own funds, as heretofore.)

7. *Resolved:* That the Committee on Policy recommends the increase of the annual dues from $4 to $5; that a class of sustaining members be created, with dues of $10 or more; and that a class of associate members be created, with dues of $3, to be open to undergraduate and graduate students of colleges and universities.

8. WHEREAS the Committee finds, on investigation, that in two-thirds of the 268 colleges and universities reporting, the number of hours of instruction entails so heavy a burden upon the teacher as to prevent the effective prosecution of research, be it

Resolved: That the American Political Science Association should emphasize the grave responsibility of universities and colleges for the development of research in political science and urge an increase of the facilities for such research therein, including the expansion of funds available for original and creative work in this field, the establishment of professorships primarily for research, the extension of the practice

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of affording relief from instruction for research purposes, and the provision of ample research equipment, services, and means of publication.

9. WHEREAS, in the present distribution of funds in aid of research inadequate provision is made to enable mature scholars to carry on important work through a period of years, be it

Resolved: That the universities and foundations be urged to provide more adequate support for selected research projects of more mature scholars.

10. A. *Resolved:* That the American Political Science Association could render a valuable service to research and instruction in political science by the publication of important documents, such as new constitutions, statutes, and other state papers, with accompanying historical and explanatory comments, such publication to be made as promptly as possible after the appearance of the documents.

B. *Resolved:* That it is desirable that efforts be made to facilitate the publication of special monographs in political science.

C. *Resolved:* That efforts be made to secure funds such as would permit the publication of the public documents and monographs referred to.

11. *Resolved:* That it is the sense of this Committee that the American Political Science Association should make early financial provision for editorial assistance to the managing editor of the *Review*, for reasonable remuneration to contributors, and for adequate compensation for the managing editor.

12. *Resolved:* That the Committee on Policy should be continued for the purpose of securing as far as possible the execution of the policies outlined in this report and with authority to solicit funds therefor.

As a result of discussion in the Executive Council, the following addition was made:

Resolved: That it should be the duty of the executive director to consider and report upon the relation of political science to the other social sciences, and to promote coöperation with other organizations in the social science field.

THOMAS H. REED, *Chairman.*

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BOOK REVIEWS

EDITED BY A. C. HANFORD
Harvard University

Abraham Lincoln, 1809-1858. By ALBERT J. BEVERIDGE. (Boston: Houghton Mifflin Company. 1928. Two Volumes. Pp. xxx, 607; x, 741).

The Constitution of the United States which now and then a good many people have occasion to swear to support is not precisely identical with the document adopted at the close of the Revolutionary War and modified by three groups of formal amendments since the original adoption. The real Constitution under which the government operated down to the outbreak of the Civil War was very largely written in decisions handed down by John Marshall, Chief Justice of the Supreme Court. Albert J. Beveridge wrote the *Life of John Marshall*, in four massive volumes which constitute one of the foremost biographies in the history of American letters. The Constitution under which we have been operating since 1861, until the recent amendments permitting woman suffrage and certain other experiments, was very largely the product of movements and of legislation in which the outstanding name was that of Abraham Lincoln. Mr. Beveridge had a praiseworthy ambition to place on the shelf beside his *Marshall* four additional volumes dealing with the life and influence of Abraham Lincoln. He died with his task less than half accomplished. How impressive a work it would have been had he lived to complete it, we are able to judge both by what these two volumes contain and what they lack.

This work gives us no important new information concerning the Lincoln family, the Hanks family, or the birth or boyhood of Lincoln. No significant new sources were available for the author's inquiry, and his own travels were unimportant. Not a single document of marked significance appears in these pages which had not previously been inspected by other and competent biographers. He affords the satisfaction of a more acute mind and more discriminating literary acumen than Herndon, Lamon, and Weik in the use of some of the Herndon manuscripts, but he discloses no new facts of importance, and in his effort to discover something novel in the *disjecta membra* of the papers which Herndon assembled and of which Weik is the custodian, he

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sometimes makes one wish that he had let them alone. His contribution is not in that field.

Two notable things he has done. First, he has related the Lincoln story more fully to the life of the nation, step by step, than other biographers have been able to do. His first sentence reads: "In America, democracy was in control of Congress; and the popular idol, Thomas Jefferson, was enthroned in the Presidency." Of course, Abraham Lincoln was not informed of this fact when he arrived in a log cabin in Kentucky on February 12, 1809, but Beveridge knew it, and the reader is not permitted to read the Lincoln story in detachment from national movements. Beveridge was able to keep the "close-up" and the wide perspective in remarkable focus. He might even have told us that John Marshall was on the Supreme Bench; but that was not necessary as a reminder to the reader that the same man wrote the two books. Nicolay and Hay entitled their indispensable but disappointing work, *Abraham Lincoln: A History*. So might this book have been entitled. It was to have been much more than a biography.

The other and more notable thing which this book has done is to trace the career of Lincoln as a politician as no one else has ever done it. Here Beveridge's two main reservoirs were in the Historical Library of the University of Illinois and the Library of the Illinois State Historical Society. Partly he dealt with the volumes of the Illinois General Assembly during the eight years when Lincoln was a member of that body, and partly with newspapers covering the whole range of years from 1830 when Lincoln first entered the state until 1860 when he left it for the presidency. To say that Beveridge was diligent is gravely to understate the truth. He worked with an intensity that burned his life out before its time. He knew no way to do it moderately. Those who worked with him were anxious, even alarmed, at his nerve-consuming energy. He knew no way to save himself. He used eyesight and tense nerve-strain with reckless extravagance. Few tasks are more exacting than the search of old yellowed newspapers and legislative reports. The present volumes are the product of unstinted effort carried to the length of a burning of life's candle at both ends.

The book grows better as the author shakes himself free from the Herndon material, which, valuable as it was, had already been well worked, and moves out into his orbit with Lincoln as a politician emerging into the proportions of a statesman. Beveridge is fair to the men who opposed Lincoln—Shields, Hardin, Baker, Trumbull,

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and especially to Douglas. It would not be surprising if he should be accused of admiring Douglas more than he deserved. That, however, will not be the judgment of the more thoughtful readers. Beveridge's method in all this is a wise and worthy one. If only he could have lived to finish the book, a far greater Lincoln would have emerged from it than meets us at the end of the second volume. We may be sure this book does not end as it would have ended if Beveridge had lived to complete it.

The book has been permitted to go to press with far too many mistakes in it. There are errors that will be the more mischievous because Beveridge intended to be so careful to avoid them. This is not the place to list them, but they are there. The book is one of permanent and pathetic value. It is a politician's estimate of Lincoln as a politician. Had Beveridge lived to complete it, the work would have been the second and concluding chapter of a constitutional lawyer's account of the enlargement of the American Constitution. But even as it is, a truncated cone, a column broken beyond repair, it is a great book.

WILLIAM E. BARTON.

Vanderbilt University.

The Intimate Papers of Colonel House. Arranged as a Narrative by CHARLES SEYMOUR. (Boston: Houghton Mifflin Company. 1928. Vol. III, pp. xviii, 453; Vol. IV, pp. xii, 552.)

Students of history and political science will find the concluding volumes of Colonel House's papers exceedingly rich in first-hand materials. Not a single outstanding event during the momentous years between the entrance of the United States into the World War and the signing of the Versailles treaty escapes illumination from these pages. The part which our country played in the economic, fiscal, and military phases of the conflict, the struggle among the Entente Allies over unified command, the development of Wilson's idealistic theories respecting the war, the peace feelers, the Russian revolution, armistice terms, the Paris conference, every significant item in the peace treaty, the endless wrangling, and the outcome are all thrown into a new perspective by the light which streams from the Colonel's papers. They must be examined with minute care by everyone who would gain an insight into the personalities and acts of the drama. Nor are they less valuable for the study of contemporary international relations, of which the war diplomacy was merely a passing aspect.

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Many controverted questions are here settled at last, and perhaps as many more raised to vex the champions of President Wilson. On pages 61-63 of the third volume, for example, the fiction that the President had heard little or nothing about the secret treaties before he reached Paris is completely demolished. On page 489 of the fourth volume is a confession that the Versailles pact was after all "a bad treaty." Colonel House himself wrote on June 29, 1919: "I wish we had taken the other road, even if it were less smooth, both now and afterward, than the one we took. We would have at least gone in the right direction. . . . ." Practically a confession of defeat, this gesture of regret will certainly rile the keepers of the Wilsonian tradition and delight those realistic politicians who boast that we went into the war for the noble purpose of "saving our skins," *i.e.*, American stakes on the table.

Those who dabble in the philosophy of history, no less than the fact sifters, will discover here food for meditation. What a study in the organic relation of deed and word could be made by a detailed comparison of Colonel House's account of the armistice and the Fourteen Points (which came within an ace of being thirteen) with the account presented in the memoirs of Prince Max of Baden, the German chancellor! Under water up to their noses, the Germans grasped at straws—and they succeeded in getting hold of several little bits of pecto-cellulose, already water-logged. Yet Colonel House thinks that President Wilson did not have time, before he began, to tell our associates in the war what he was willing to fight for, and after it was all over he had to admit the discomfiture of "a bad treaty." It would be entertaining to hear a debate between Hegel and Antisthenes on this topic in the nether regions.

For the student of political science here is a vein of richest ore—a chance to examine under a microscope an immense and vital exercise of unofficial political power. He will be especially interested in discovering (III, p. 47) that in April, 1917, President Wilson had in mind writing a book bringing out clearly "the necessity for a more responsive form of government and the necessity for having cabinet members sit in the House of Representatives." This, the President thought, "would eventuate in something like the British system."

The editor, Mr. Seymour, is a true artist; he keeps himself out of his picture; but the power of "contemplation" is the power of Rodin, not the power of marble.

CHARLES A. BEARD.

New York City.

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The Pragmatic Revolt in Politics. By WILLIAM YANDELL ELLIOTT. (New York: The Macmillan Company. 1928. Pp. xiii, 540.)

Professor Elliott's book comes to redeem the long-continued neglect of political philosophy in the United States, a neglect the more curious because no one could defend it on the usual "pragmatic" ground that such philosophy is mere speculation barren of results. Here at least we cannot accept the usual facile dismissal—"never mind the theories, let's get at the facts." The theories that men hold about the state have profound practical significance. They are enthroned in institutions, like those of Bolshevism or Fascism or Constitutionalism, which control our lives and liberties. To Dr. Elliott one form of the "pragmatic revolt" is the refusal to reason out the theories we hold, and his very method is itself a protest against it. It is in fact one of the outstanding merits of his analysis that it seeks to pierce to the meaning, in terms of human life and destiny, of the great conflicting doctrines of government which have found, or are claiming, embodiment in the practice of modern states. Nor is it a minor merit that, taking a reasoned stand for constitutionalism against its modern opponents, he is not content to show the weaknesses of contrary theories, but offers a constructive interpretation marked by much vigor and discernment.

The author's starting point is the twentieth-century revolt against "the democratic and constitutionally unified state." In effect, all the doctrines of revolt are diagnosed as forms of "pragmatism." One may, perhaps, question whether the diagnosis is not too generally applied. At any rate, to Dr. Elliott pragmatism is a Protean principle, for it unites under one banner Mr. Dewey and Signor Mussolini, M. Duguit and Mr. Cole, Mr. Laski and M. Sorel. It is the common ailment of those who, like the pluralists, are engaged in proclaiming the new philosophies of revolt, and of those who, spurning theory altogether, busy themselves with the "scientific" measurement of public opinion or with "endless statistical studies of problems of administration, comparable, as T. R Powell puts it, to 'counting the man-holes on sewers.'" Diverse as these reactions are, to the author they represent alike the anti-rationalistic spirit which treats ideals as myths and truths as experiments. Under this banner march the enemies, the unconscious as well as the deliberate enemies, of the liberal and constitutional state.

Undoubtedly these enemies have been out in strength. They have declared that public opinion is a delusion, parliamentary government

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a fraud, democracy a failure. Some want to reform constitutionalism, but many want to destroy it. It is against the latter that the author directs his argument. We note with satisfaction that the general cause of democracy is again beginning to find worthy defenders who are no longer content with the stock arguments of the democratic tradition. The situation calls for new weapons of defense as well as of attack. Dr. Elliott's book, though quite different in style and in treatment, may in this respect be set alongside de Ruggiero's recently published *History of European Liberalism*.[1] Perhaps they are both signs that the attack is being stayed.

Dr. Elliott turns his guns particularly on the pluralistic and the fascist theories. He presents the most deep-reaching critique of these doctrines which can be found today. It is the more effective because it appreciates the conditions which stimulated these doctrines. The author recognises the defects of the traditional theory of sovereignty, though he makes rather little of its supreme defect, as seen in its application to international relations. What is required, he believes, is a reinterpretation, and not a rejection, of the principle of sovereignty.

This reinterpretation would ensure both the liberty of associations which the pluralists demand and the order within society on which the fascists insist. But it would not sacrifice the one to the other. To him, sovereignty is the assurance of "the community of purpose that is the state." Pluralism would disrupt and fascism would distort that community to meet particularist demands. Fascism, refusing to recognise either its true nature or its limits, thinks to manufacture it by coercion. But no force-system can "command the tide of human purpose." The community of will on which every stable government must rest is a real thing, this "general will" which Rousseau felt toward, but which he failed to analyze with pyschological discernment; but it is not all-inclusive. Moreover, it cannot express itself through legal sovereignty unless that sovereignty is also the "guarantor of an increasing area of freedom."

To give positive form to his principle, the author describes it as "the co-organic theory of the state." The state, he points out, possesses, like every other organized grouping, two aspects: a structure and a purpose. Its members are united in a twofold way, by an "organic consensus" which maintains the structure, the means, and by a common sense of the values for which the group stands. The former is

[1] See review following this one. *Man. Ed.*

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the economic aspect, the latter the moral. Dr. Elliott wants to use the rather curious term "co-organic" to express this double character.

Leaving aside the term itself, I am doubtful as to whether an analysis of this kind solves his problem. I should think that most of the writers whom he criticizes could accept this analysis and still maintain that it did not affect their argument. Why, for example, should not Mr. Laski declare that of course the state has a common purpose, but that so also has the trade union or the manufacturers' association? What Dr. Elliott is really concerned to show is the unifying character of the state's purpose, and his "co-organic theory" is not adequate to do so. It is in this direction that we may look for a further development of his work. It might be suggested that here he should follow a different method. He should develop the argument directly instead of by constant reference to the views of others. We hope he will go on to write a volume about the state, rather than about the views of the state with which he disagrees or agrees. The continual reference to the views of other authors makes the book repetitious and breaks its continuity of exposition.

The book, in fact, is to be welcomed no less for its fine promise than for its performance. It is the work of a true thinker, and that is rare enough. It is sincere and trenchant and thorough. As a critique of modern political trends, it is a book which no student of the subject can afford to neglect. Dr. Elliott shows an unusually extensive familiarity with the literature of his field, and happily combines a philosophical approach with the attitude of a scholar trained in the studies of government and jurisprudence.

R. M. MacIver.

Columbia University.

The History of European Liberalism. By Guido de Ruggiero, translated by R. G. Collingwood. (New York: Oxford University Press. 1927. Pp. xi, 476.)

The complex character of the development of liberalism, on the Continent as well as in Engand, has not previously been available in any single work in English. This translation, excellently done, of the Italian work of Professor de Ruggiero, which was first published in Italy in 1925, is therefore greatly to be welcomed by students of political institutions as well as of ideas. It is the work of a competent historian, whose philosophical perspective is adequate to his task.

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The liberty which modern liberalism has achieved is not based upon the feudal contractual dualism of group privileges, which was produced by the imposition of Germanic ideas upon the wreckage of the Roman world. It is "the liberty which universalizes privilege to the point of annulling it as such." The democratic strain which transformed liberalism throughout the nineteenth century is linked up with economic causes and with nationalism as well as with the ideas of political prophets. Agrarian reforms and industrial development are interwoven with the doctrines of economists and of political philosophers.

The development of civil liberty, a protection against the interference of government, guaranteed by the state, involved a conflict between laissez-faire theories and collectivism. Political liberty is used by the earlier English theorists and by Montesquieu as what de Ruggiero calls a "guarantism." But with the transformation of parliament from an organ of checking into a representatve agency of control, the view held by Rousseau of the omnipotence of the general will transforms political liberty into an *equality of sharing* in the formation of laws. "Thus the [French] Declaration of Rights contains the terms of three Revolutions: a Liberal revolution in the strict sense of the term, a democratic revolution, and a social revolution: but these three only represent the progressive expansion of one and the same individualistic spirit developed to the extreme point of socialism; hence they all equally figure in the history of the Liberal mind" (pp. 72-73). The remainder of the work is an elaboration of this formula, pursued through examining theorists and constitutions, but hardly brought to bear sufficiently upon institutions as they function in practice. The emphasis on political machinery is very slight.

There are several other points on which criticism of de Ruggiero's emphasis or interpretation may be made. Although he shows the importance of Siéyès in connection with the development of the Third Estate into the broader democratic nation, he hardly does justice to the criticism which Siéyès leveled at Rousseau's dogma that the general will could not be represented. Parliamentary sovereignty required the apology of Siéyès rather than of Rousseau.

In the second place, socialism requires a greater limitation than de Ruggiero is prepared to give it if it is not completely to swallow liberalism. What remains of "guarantism" in the socialist democratic state? Some federalization of authority is suggested in the recognition

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of the autonomous character of workmen's groups and the separation of church and state. But the practical limits of state authority or of group pluralism are hardly resolved by pointing out the practical limits imposed upon socialist parties by the democratic struggle for power (pp. 381-394).

When one has included also the too scanty considerations of the international implications of Liberalism, and the dismissing of the origins of the internationalism both of the League and of class solidarity, one has about closed the list of major points for criticism. An Italian scholar, standing outside the narrow egotism of modern Fascism, seems to have been peculiarly able to interpret the unity of European liberalism and the contributions made to it by the great thinkers of France, England, and Germany, as well as by those of the Risorgimento.

De Ruggiero's conclusion, although written under the shadow of Fascist dictatorship, rests upon the perspective that he shares with Croce and Ferrero: "Recent experience affords a proof of the vitality of the Liberal state, hard beset, yet issuing victoriously from the battle. Its rivals, the 'technical' state, the 'administrative' state, the 'dictatorial' state, have served only to vindicate once more, by their virtual bankruptcy, the triumph of the 'political' state."

It is a book of great importance, competently and in places brilliantly conceived, that should hearten, through its careful array of evidence, all those who believe that only through free association and the dialectic of constitutional responsibility can the creative forces of modern industrial society be at once guided and made fruitful.

W. Y. Elliott.

Harvard University.

History of American Political Thought. By Raymond G. Gettell. (New York: The Century Company. 1928. Pp. ix, 633).

This book represents the first attempt which has been made during the past twenty-five years to survey the entire field of American political theory, and it is easily the most comprehensive treatment of the subject ever prepared. Professor Gettell set as his goal a description not merely of the most important writers and individual treatises but also of the general lines of development in American political thought, and his interpretation of "political thought" is so broad that he includes foreign policy within it, nearly one hundred pages being given to that aspect of American history.

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The introductory chapter indicates the general nature, the main tendencies, and the most important sources of American political thought. There follows a rather short chapter in which the European background—international, economic, constitutional, and philosophic— is sketched in. After a chapter dealing with ecclesiastical and political institutions in the colonies, and with early American political theory, come nine chapters carrying the story from the Revolution through the period of Reconstruction. Usually there is in each chapter a brief historical introduction, a survey of foreign affairs for the period, and a consideration of the various movements of theory during the time. The remaining seven chapters deal with recent political issues, foreign relations since the Civil War, theories of governmental organization and functions, theories of municipal government, and new influences on political thought.

If one may judge by the foot-notes, nearly all of the material is taken directly from the sources, and these notes constitute a very useful bibliography of source material in this field. Each chapter has a separate list of references devoted to the secondary writings on the subject or period under consideration. Indeed, the book as a whole constitutes the most adequate bibliography now available in American political theory. Its value as a reference work is, however, somewhat lessened by the presence of a number of errors of fact and a few statements which are sufficiently questionable to require more explanation than they receive. Some examples may be given. It is clearly incorrect to say that Pitt and other "liberal statesmen" in England accepted the point of view which the Americans adopted in 1774 (p. 85). Pitt claimed for Parliament general legislative supremacy over America, denying it only the power of taxation. It was in 1776, not in 1781 (p. 100), that the Continental Congress recommended to the colonies the establishment of governments independent of England. And not all of the original state constitutions made a "clear distinction between constitutional law and statutory law" (p. 101). Nor is it accurate to say that Woolsey "rejected the doctrine of natural rights" (p. 401). He did abandon the theory of a state of nature, but he devoted 137 pages of his *Political Science* to an exposition of his own particular brand of natural rights philosophy. The Virginians of the period of Dale's laws, or the residents of Massachusetts under the early oligarchy, would have been surprised to read that the colonists "found themselves in a state of nature" (p. 71). At most, this statement could apply to a relatively small number of

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the early settlements. If John Adams "set forth the doctrine of nullification" in 1765 (p. 161), the same is true of practically every pamphleteer of the time. Nor is it clear why the term "nullification" is used. A comparison of Adams's early and later writings will cause one to doubt whether his later works show an abandonment of the natural rights theory and whether his early writings do not indicate a belief in the historical method (p. 163).

However, when the inclusiveness of the book is considered, it is apparent that there are relatively few errors, and its usefulness as a reference work is such that all teachers of the subject will be grateful to its author. In the opinion of the present reviewer, the book is, in both scope and method of presentation, so encyclopedic as to prevent it from being of great value except as a book of reference or guide to the literature of the subject. If it touches upon nearly all important writings in the whole range of American political thought, it deals thoroughly with none of them. For instance, John Wise is discussed in twenty-four lines, the Convention of 1787 in seven pages and Jefferson in six; individualism, government regulation, socialism, anarchism, and syndicalism are all disposed of in twenty-one pages, and the recent "able group of writers" who have "attacked the basic principles upon which democracy is defended" receive twenty lines. It seems doubtful whether such brief descriptions will be particularly informative either to the reader already familiar with the material in question or to the beginner in the field.

Moreover, the treatment is mechanical as well as sketchy. This is probably due in part to a desire for objectivity. In the preface the author states that he has tried to present fairly the point of view of both sides in controversial questions—an intention which has been carried out. Now if the philosophies embodied in those arguments are to be made to live again in the mind of the reader, the author must provide interpretation, and historical and philosophical guidance as well as fair descriptive summaries. In the present work there is more historical guidance than has been the case with previous books on the subject, but there is little attempt at analysis, interpretation, or evaluation. The objective attitude requires that the scholar enter upon an investigation without preconceived opinions; it does not preclude the desirability of critical examination and of philosophic discussion. Unless the history of political thought is to be deprived of the intellectual interest which is its birthright, analysis, inter-

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pretation, and evaluation must be regarded as just as essential as accurate description.

BENJAMIN F. WRIGHT, JR.

Harvard University.

Ancient Chinese Political Theories. By KUO-CHENG WU. (Shanghai: Commercial Press, Limited. 1928. Pp. 340).

This is a study based upon works of the outstanding political and philosophical thinkers of ancient China. Each chapter, with the exception of the first three, which are introductory, may be described as an essay on the theory of a given thinker. The book itself has no preface, introduction, or index. The absence of the last is undoubtedly a fault. The volume is to be commended, though, for its brief description of the primary sources for a study of ancient Chinese political theories. It is a contribution to the study of political science in western countries. It will aid those of us who are still teaching what we were taught in getting away from the old classification of "political" and "non-political" peoples. Ancient Chinese philosophers had a theory of the state, and many of the early Chinese thinkers were in very deed political scientists.

The author writes of the most important thinkers of the Chow period, although he uses earlier sources. One wishes that he had expanded his studies to include the thinkers of a few centuries later also. This statement implies that Dr. Wu's shortcomings are sins of omission rather than commission. We want and need more. There are many great thinkers who might be mentioned. I shall mention but two: Wang Mang (1st century A.D.), for his theories on farm relief and the abolition of slavery; and Heang Seu (6th century B.C.), for his program for the pacification of China through the instrumentality of a league of states.

Dr. Wu's chapter on Shang Yand is exceptionally strong. We are sure, after reading his chapter on Laotze, that the author has a Buddhistic point of view—unconscious, it may be—or else it is that the Great Buddha and Laotze are verily children of the same century. Laotze, with the Buddhist tinge, is not offensive to me. I like Dr. Wu's Laotze. Personally I like to think of the Canon of Shun as China's constitution; therefore I do not take kindly to the association of the idea of constitution with the treatise on "The Officers of Chow." Dr. Wu's discussion of this great treatise on government is, however, thoughtful and informing. There is much in "The Officers of Chow"

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for our modern sociologists, and for those interested in the theory of punishment. I cannot agree with Dr. Wu on Mencius. Mencius will always appeal to Americans. Dr. Wu uses this paragraph in speaking of Mencius' theory: "The merits of such a theory are self-evident. It is thoroughly democratic. It elevates the position of the individual. It has for its cardinal principle the equality of man; and it renders no more homage to the sovereign than to the subject. Thus we find that Mencius approves the right of revolution and believes in the doctrine that government exists, and should exist, only for the governed."

Considering how modern this thought is, even for the western world, what student of politics can neglect China's great Chow period? For, was not the Chow period that in which was forged the subsequent culture of Eastern Asia?

To repeat, Dr. Wu's book is welcome. It is doubly welcome because the author is a Chinese.

ELBERT D. THOMAS.

University of Utah.

The Paradoxes of Legal Science. By BENJAMIN N. CARDOZO. (New York: Columbia University Press. 1927. Pp. 142.)

It may be not too much to predict that as the account now stands the chief American contributions to literature and the progress of human thought will prove to have been made in the field of jurisprudence. The writings of Holmes, Cardozo, and Pound have presented the results of a deeper probing into the operation of the legal system than had been before attempted by men bred to the common law, and have presented those results in most instances with a vividness and rare literary charm which are usually alien to the field of abstract speculation. Mr. Chief Justice Cardozo's latest volume, consisting of a course of lectures delivered in 1927 on the Carpentier Foundation at Columbia University, adds another item to the anthology of distinguished American contributions to juristic theory.

As the title of the book indicates, the central problem which engages the attention of the Chief Justice is suggested by his observation that the task of the law is to solve antinomies. "The reconciliation of the irreconcilable, the merger of antitheses, the synthesis of opposites, these are the great problems of the law. . . . . We have the claims of stability to be harmonized with those of progress. We are to reconcile liberty with equality, and both of them with order. The property rights of the individual we are to respect, yet we are not to press them

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to the point at which they threaten the welfare or the security of the many. We must preserve to justice its universal quality, and yet leave to it the capacity to be individual and particular" (pp. 4-5). Therefore the goal of juridical effort is not logical synthesis, but compromise in the effecting of reconciliations.

The Chief Justice addresses himself primarily to the great paradox involved in the need for compromise between stability and progress. It is the task of the judges to build new law, where the building of it is left in their hands, which will be adapted to the needs of society; and the needs of society are changing needs. The author lays down a working rule for judges confronted with such a task: "When changes of manners or business have brought it about that a rule of law which corresponded to previously existing norms or standards of behavior corresponds no longer to the present norms or standards, but on the contrary departs from them, then those same forces or tendencies of development that brought the law into adaptation to the old norms and standards are effective, without legislation, but by the inherent energies of the judicial process, to restore the equilibrium" (pp. 14-15). "The pressure of society invests new forms of conduct in the minds of the multitude with the sanction of moral obligation, and the same pressure working upon the mind of the judge invests them finally through his action with the sanction of law" (p. 18). "At times the new *ethos* does not mean that there has come into being a new conception of right and wrong. It may mean nothing more than a new impatience, a new restiveness, in the face of old abuses long recognized as wrong. Transition stages there are also when an observer can mark the law in the very process of becoming. It is throwing off a crippling dogma, and struggling for freer motion" (p. 25). "Our course of advance, therefore, is neither a straight line nor a curve. It is a series of dots and dashes. Progress comes *per saltum*, by successive compromises between extremes" (p. 26).

These compromises are effected by the judges' conception of the demands of justice. This conception must be no purely personal one, but must result from an effort to interpret the morality of the community. "Law accepts as the pattern of its justice the morality of the community whose conduct it assumes to regulate. In saying this, we are not to blind ourselves to the truth that uncertainty is far from banished. Morality is not merely different in different communities. Its level is not the same for all the component groups within the same community. A choice must still be made between one group standard

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and another. We have still to face the problem, At which one of these levels does the social pressure become strong enough to convert the moral norm into a jural one?" (p. 37). The pressure is exerted on the judges, and the choice is for them to make. "When this pressure has gone so far that it may no longer be resisted, the judges are to say. For they are the interpreters of the social mind, its will, its expectation, its desires" (p. 48). "In order that such a moral claim should become juridical, it must pass through . . . . the stage of declaration of right. A declaration of right is the admission by organized society that the claim is justified from the public point of view. Organized society may speak in such matters by the voice of its representatives in legislative assemblies. It may speak, at least in our Anglo-American system, by the voice of its judges" (p. 49).

These striking passages steer perhaps the truest and straightest course yet struck between "realists" who insist on the half-truth that social forces dictate law, and Austinians who neglect to notice that the legislative organ in making law is largely influenced by the action of such forces.

JOHN DICKINSON.

Princeton University.

Principles of the Constitutional Jurisprudence of the German National Republic. By JOHANNES MATTERN. (Baltimore: The Johns Hopkins Press. 1928. Pp. xv, 682.)

Abhandlungen zur Reichsverfassung. Edited by WALTER JELLINEK. (Berlin: George Stilke.)

Volksentscheid und Volksbegehren. Ein Beitrag zur Auslegung der Weimarer Verfassung und zur Lehre von der unmittelbaren Demokratie. By CARL SCHMITT. (Berlin and Leipzig: Walter de Gruyter & Co. 1927.)

Dr. Mattern's book is one of the few whose title properly indicates precisely its content. The tenth anniversary of the drafting of the German republican constitution is an appropriate moment for the appearance of a volume which sets forth in an exact and scholarly fashion the principles of law which gave form to those political forces involved in the cataclysm of the Revolution. Since the author is appropriately non-committal regarding the future, the extent to which his treatise will interest the prospective reader depends largely upon whether the latter shares with the author a desire to know what the

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"success or failure [of this constitution] will contribute to the general field of constitutional jurisprudence, and above all to that body of opinion which aims at the elaboration and practical realization of a theory of the state whose affairs are conducted by a government of law, or, more correctly, a government of men subject and obedient to law."

This review hardly offers an opportunity to discuss with the author the validity of such a theory of the state. After all, no one will quarrel with him for having "undertaken to present to the student the general principles upon which the framers of the constitution have avowedly constructed the new fundamental law of the National Republic." As a matter of fact, Mr. Mattern has at times done a good deal more than to present simply the principles. He has, for example, attempted to gauge the meaning of various clauses of the constitution by an analysis of the constitutional debates in Weimar, a task the fulfillment of which was greatly needed. Controversies of an extended sort have raged over many of the more important clauses of the constitution, and, in the opinion of the reviewer, Mr. Mattern has delved into these scholastic complexities with a certain real sympathy for the logical and jural niceties involved therein.

The author has divided his material into three parts, entitled Historical and Theoretical Background, Relations of Reich and Länder, and the National Government. Part I is subdivided into four chapters dealing with the German constitutional system prior to the Revolution, transition from monarchy to republic, conception of state and sovereignty in German constitutional jurisprudence, and the question of the legal continuity of Empire and Republic. Part II also has four chapters, entitled: division of competences between Reich and Länder, national administrative control over the Länder, states, rights, and the national unitary state. The last part presents six chapters, on the choice of a parliamentary form of government, executive and legislative departments, the ordinance power of the national government, direct government by popular election, initiative, referendum, and recall, the national judicial system, and special topics and conclusion.

Throughout the work, it is the prevailing method of Dr. Mattern to consider the relevant constitutional provisions in the light of the discussions of the national constitutional convention and the subsequent discussions of the German jurists, like Preuss, Anschütz, Hatschek, Kahl, Pötzsch, and others. This is particularly true of the theoretical discussions of Parts I and II. His "decision" seems to be drawn

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on the "juridically" sound ground of "majority" or prevailing opinion. From the more strictly theoretical point of view this is perhaps less satisfactory, and a treatise primarily devoted to theories of state and sovereignty would be ill-advised to follow such a course. But it serves the rather important function of interpreting into English the abstract, and sometimes rather scholastic, juristic reasoning of German treatises on constitutional law. The reviewer has been able to use the book to seemingly good advantage for just that purpose in an advanced class. Whether the author was wise in leaving quite so many of the German abstract notions untranslated is a difficult question to answer. They certainly are untranslatable in any strictly logical sense. But they considerably increase the difficulty of reading.

Such careful presentation of the conflicting arguments of German jurists does not leave the author time or space to discuss the underlying political realities. These, however, do not form part of the objective of his book as defined in the title. The only part which really suffers from this self-imposed limitation is the historical introduction, which is decidedly thin. But it may be doubted whether anything more real could have been presented within the avowed purpose of the book. To sum up, the value of this work lies, on the one hand, in its exposition of prevailing German constitutional jurisprudence (with perhaps a little bit of partiality towards Anschütz), and, on the other, in its frequent reference to the constitutional convention of 1919, with which the author seems thoroughly familiar.

More and more detailed work is being done on the constitutional and political workings of the new German constitution, and the fear is not entirely unfounded that the vast amount of scholarly *minutiæ* turned out by the intensely specialized German scholar will soon obscure the essential structural problems involved. Under the general title of *Abhandlungen zur Reichsverfassung*, Professor Walter Jellinek is editing a series of studies dealing with specific problems of the new constitution. They are obviously dissertations. The first of these, by Dr. Carl Schumacher, is entitled *Die Redaktionskommission des Verfassungsausschusses, ein Beitrag zur Vorgeschichte der Reichsverfassung* (pp. 85). It deals with formal changes which a small revising committee made in the text of the constitutional draft after it left the drafting committee of the convention. The author reaches the conclusion, at the end of his analysis, that the alterations of significance were few, and that the committee, on the whole, performed its work admirably.

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Under the title of *Preussen und seine Provinzen im Reichsrat* (pp. xvi, 147), the second publication of these *Abhandlungen* deals with the theory and the complex practical problems of the composition of the new National Council in general and the representation of Prussia and its provinces therein in particular. The author of this essay, Dr. Fritz Hummel, again deals with his topic in a legal manner, although he adds a good deal of historical, and some foreign, material for purposes of comparison. He indicates, to some extent, actual political practice under the existing law. The center of the whole discussion is the undecided issue as to whether the Prussian government can interfere with the independence of the representatives of the provinces. This question is related to the general problem of Prussia's influence in the Reich, and is therefore of considerable political significance, particularly in connection with the present movement for a reorganization of the relations between Prussia and the Reich. A good bibliography enhances the value of this painstaking study of a difficult matter.

A series somewhat different from that of Professor Jellinek is that of the *Institut für ausländisches öffentliches Recht und Völkerrecht*, edited by Professor Viktor Bruns, to which reference has been made previously. The second issue of these *Beiträge* is an interesting contribution of Professor Carl Schmitt on the problems of the referendum and initiative. Mr. Schmitt touches upon the significance of these matters both under the Weimar constitution and as a general problem of the doctrine of direct democracy. This study, entitled *Volksentscheid und Volksbegehren*, is valuable beyond its strictly constitutional significance on account of the well-known position of the author in the field of political theory.

CARL JOACHIM FRIEDRICH.

Harvard University.

State Government. By FRANK G. BATES AND OLIVER P. FIELD. (New York: Harper and Brothers. 1928. Pp. VII, 584.)

This book, as explained by the authors, was written to serve as a text in a survey course in state government offered to undergraduates in colleges and universities. This review is confined to the expressed objective.

A course in state government may presuppose that the students are familiar with the general phases of American government. With this prerequisite, a first task is to approach the federal system from

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a "state" viewpoint. This may involve the historical reasons for our particular federal system, how it differs from other systems, and the divisions and limitations of power. Professors Bates and Field, in Chapter II, have analyzed the division of powers in clear, concise statements which are easy to understand, and therefore excellent for assignment. Except for this chapter and a brief introduction to general theory underlying all governments, a student limited to the text must rely upon supplementary lectures, class-room discussion, and other readings for an understanding of the colonial origins of state government and of the development of political theory applied to the United States of America, and for a complete consideration of present problems of governmental relationships.

Having disposed of the first phase, i.e., the division of powers, the authors of a text-book on state government are confronted with the difficulty of describing the institutions, procedures, and forms within the states. Here they find forty-eight governments, each conforming to a general type but varying in important detail. If an attempt were made to compare practices under the usual headings, a single book, unless handled masterfully, would be unimaginative and dull. There is also the time element. A book written in 1928 as a photographic document picturing activities and relationships would run the risk of obsolesence in five years.

Professors Bates and Field have wisely avoided the extremes of minute comparative descriptions and of indefinite generalities. Without attempting to describe the forms and processes in all states, they have presented the practices common to all and observed, by use of parenthetical statements, the progressive advances and experiments for the few. In so far as space permits, some consideration is given under each chapter topic to the theoretical approach, the historical development, description of existing situations, and an appraisal of results. It is assumed that the application of problems to specific states, i.e., comparative state government, must again be reserved for lectures, class-room discussion, and reference to governmental reports. This, it would seem, completes the purpose—a condensed yet comprehensive outline brought down to date. Attention is held by the short paragraph method and by the liberal use of marginal headings.

The appendices contain the constitutions of Vermont (1771), Indiana (1850), and Arizona (1910), to illustrate, respectively, a government at the brink of colonial days, the government of a state

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in the formative period during the intermediate stage of national development, and the government of a more recent state. There is also a copy of the Constitution of the United States. The references at the end of the chapters are to articles or books found in most libraries. There is a notable absence of references to official reports, state documents, and surveys, probably because these materials are not readily available to most undergraduates.

There are general basic problems more or less similar for all governments—national, state, and municipal. Professors Bates and Field have recognized this common thread. Nevertheless, a large portion of their book contains discussions of identical problems that are found in the standard books used in the other courses on applied government. This is not a criticism of their book any more than it is a comment upon other books used for steady required readings in the standardized courses which most students of state government also elect. If the basic material common to all governments and repeated in the single text-books on state, municipal, and comparative government were condensed into a single treatise, there might be greater economy in teaching time, student effort, and expense, and better results in clarifying the student mind. More time would then be permitted for a course in state government for consideration of the problems which make the course distinctive, namely, federalism, state constitutional law, and relationships of states to their municipal subdivisions.

In spite of the inclusion of subject-matter pertinent to other governmental units, the book under review is very adaptable for class-room purposes. Perhaps it will be most helpful if the instructor will also have available a complete outline of the government and public activities in a particular state. Thus used, it will furnish the background for the observation of an isolated state government in actual operation.

MORRIS B. LAMBIE.

University of Minnesota.

County Government and Administration in North Carolina. By PAUL WOODFORD WAGER. (Chapel Hill: University of North Carolina Press. Pp. xii, 447.)

This book will be welcomed by students of local government in the United States. It constitutes a substantial contribution to the rather meager list of books on county government that are based on

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a sufficient amount of actual field work to enable the author to do more than write in generalizations. For more than a decade the University of North Carolina, under the direction of Professor E. C. Branson, has been investigating county government in operation in that state. In 1924 the Institute for Research in Social Science was founded, and as one of its first problems it undertook an investigation of county government and county affairs. As a part of this project, field investigators made intensive court-house studies in forty-three of the one hundred counties of the state. With the mass of data gathered by these investigators at hand with which to supplement his own observations, Professor Wager has written a comprehensive "general work describing the development, present organization and practice, and the outstanding needs, of North Carolina county government."

The content is presented in twelve substantial chapters, the titles of which will indicate the scope of the book: history of the North Carolina county; the county as a geographic area; the county as a political unit; the board of county commissioners; the assessment and collection of taxes; fiscal control; public highways; the administration of justice; public schools; public welfare and public health; minor officers; and efficiency in county government.

Professor Wager writes primarily for the people of North Carolina, with the purpose of acquainting them with the conditions which prevail in county administration, of explaining the cause and purpose of legislation recently enacted, and of suggesting further improvements that might be made in the interest of economy and good government. This fact increases the value of the book for students of county government in other states, because the situation is described as it exists, with no attempt to gloss over bad features; the criticism is constructive, and well-considered suggestions for improvements are woven into the discussion. County government has a bad name, and the reader will find practically all of the bad features and practices associated with the usual conception of county government to have a place in North Carolina—lack of responsibility, ignorance, inefficiency, carelessness, dishonesty, selfishness, complexity, waste, graft, fee system of compensation, indifference.

The hopeful aspect of the situation is that in this state county government is undergoing a process of change for the better, and already some remarkable advances have been made. The county-manager system is optional, and several counties are operating more

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or less experimentally on that system. Recent legislation provides the foundation upon which county budget control may be developed, and a beginning has been made in the way of directing and regulating county borrowing. A county government advisory commission has been set up by the state for the double purpose of advising county officers and recommending legislative action. Remarkable progress has been made in the administration of public welfare and health.

Special legislation for individual counties has been carried to an extreme, and the variety and complexity of county government in North Carolina is astounding. At the present time a great deal of healthy experimentation is taking place. Coupled with an apparent determination to improve conditions, the situation is encouraging.

Professor Wager's book is the kind of study that is needed in the field considered. More rapid and intelligent progress could be made in the reconstruction of county government wherever it is needed if comparable studies were available for all of the states. Unfortunately, few such studies exist.

I. L. POLLOCK.

State University of Iowa.

Masks in a Pageant. By WILLIAM ALLEN WHITE. (New York: The Macmillan Company. 1928. Pp. xi, 507.)

Prophets True and False. By OSWALD GARRISON VILLARD. (New York: Alfred E. Knopf. 1928. Pp. x, 355.)

These two books give the first-hand impressions of two important American editorial writers regarding some of their contemporaries. Mr. White has rewritten and toned down some articles which appeared in *McClure's Magazine*, while Mr. Villard has collected obituaries and other sketches that appeared in his magazine, the *Nation*.

Regarding his purpose, Mr. White claims that he has merely assembled his reporters' notes in order to preserve the emotions of some passing moments. He describes three party managers—Croker, Platt, and Hanna—and eight presidents—Cleveland, Harrison, McKinley, Roosevelt, Taft, Wilson, Harding, and Coolidge. He also has an interesting discussion of Bryan and two short chapters on Alfred E. Smith and William Hale Thompson. In his treatment of Platt, Harrison, Bryan, and Wilson he shows the influence of modern psychology. While he purports to show the influence of these men on their times, he also shows the influence which their times had on them. In the main, the biographies are well balanced, interesting, and excellently

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written. Only in writing about Roosevelt and Wilson does White appear to let his emotions run away with him. He admits that he knew Roosevelt best of all the presidents.

Mr. Villard has divided the objects of his editorial acumen into two main groups. The true prophets are those who share his views on economic liberalism, free speech, and pacifism. The false prophets are those who favor imperialism and militarism, or who are reactionary on economic matters. In the former group he clearly puts Smith, Borah, Norris, T. J. Walsh, La Follette, and F. Lane, while in the latter group he places Hoover, Hughes, Dawes, Curtis, E. M. House, Lodge, and Wood. He is a little uncertain as to where to place Lowden, Ritchie, Donahey, Bryan, Lansing, and P. K. Knox, but not all of his remarks regarding these men are unfavorable. The sketches are vigorously written, and there is no denying that Villard has been a keen observer and a courageous critic.

HAROLD F. GOSNELL.

University of Chicago.

La Agonia Antillana. By LUIS ARAQUISTAIN. (Madrid: Espasa-Calpe. 1928. Pp. 294.)

Mexico and its Heritage. By ERNEST GRUENING. (New York: The Century Company. 1928. Pp. xix, 727.)

These authors have in common a critical attitude toward the foreign policy of the United States in relation to the nations to the southward. Their manner of presenting their material furnishes the contrast of diatribe and an exposition based on wide reading and buttressed with abundant footnotes.

Mr. Araquistain declares himself an impartial critic. Those familiar with his *El Peligro Yanqui* will, however, find the same point of view in this later work. The United States, he argues, in crushing out the cultural life of the Caribbean and dispossessing the local populations of their land is gradually creating conditions which will drive the Spaniards out of the larger Antilles at least, and bring about their progressive Africanization. The author will doubtless have many readers—the book is in a second edition before the end of its first year—but its "history" and "economics" do not recommend themselves to those who are interested in facts rather than prejudices.

Mr. Gruening's volume is excellent—the best recent book on Mexico, and the only one giving an adequate review of recent develop-

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ments. The shortcomings of the old régime are cut in high relief. Little space is given to the economic advance in that period which a more farsighted statesmanship might have made the basis for national regeneration. The chapters on the revolutionary movement and its ideals are frank and discount not at all the frequently glossed extremes and failures of both.

The greatest gain from the revolution is stated to be the agrarian reforms. That these reforms are in theory far-reaching, and that they continue to furnish the party in power with its political issue of widest popular appeal, is beyond question. That the agrarian reforms have actually accomplished something fundamental is not so clear. The lands taken over from private possession and turned back to the Indians have had a much larger place in discussion, both within and outside of Mexico, than their extent justifies. It is to be remembered, too, that only small payments have been made on the securities which the dispossessed are offered for their lands, and that the holding of large areas, particularly by those in high political position, continues a striking characteristic of Mexican economic life.

To many, the agrarian movement, so far as it involves land division, appears to have had an influence chiefly in alarming the landowner and discouraging improvement of real estate. Until the process of distribution comes to an end, this can hardly fail to be the case. It may further be questioned whether, after all, the setting up of communal land ownership with inalienable title is a real economic advance and a step which will lead to effective cultivation of the land. At best, it is only a first step, and the real success of the agrarian program depends on the awakening of initiative and the desire for a higher standard of life, neither of which is characteristic of the Indian population.

There are so many elements in the Mexican problem, and all the experiments of the revolution are so new, that it is not possible to say which constitutes the greatest advance or whether there has been a real advance. The revolution is still promising, and its task is still to "consolidate" its program.

Some of the most pleasing chapters of the book are those dealing with the programs involving general education, music, and art, all lines in which the Mexican people have undoubted aptness and which the revolution has given merited attention. Less detached in viewpoint is the discussion of American policy toward Mexico, which, with all its mistakes, is to most careful observers less uniformly bungling

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than it appears to Mr. Gruening. The author's conclusions as to what that policy should be, however, will find few critics. Mexico is now, and long will be, a problem to herself quite as much as to her neighbors, a circumstance which in an unusual degree calls for forbearance and patience in the international policy of the country with which the relations of Mexico are of necessity of more importance—for Mexico —than are those with all other countries.

Though Mr. Gruening is evidently optimistic as to the progress which has been made and thinks less serious some of the errors in the revolutionary program than will many of his readers who know Mexico, he is under no illusions either as to the foundations on which Mexican leaders are building or as to the fragile character of the current government. "In the larger aspects of politics, it may be asserted that no progress whatever has been made since Mexican Independence. Mexico's order depends today on two individuals—Calles and Obregon. Were anything to happen to both of them, chaos would in all probability ensue at once." The volume was still fresh from the press when Obregon was assassinated.

No one who wishes to know the background and the significance of the most important of Latin American problems should fail to read Mr. Gruening's book.

CHESTER LLOYD JONES.

University of Wisconsin.

The Far East: A Political and Diplomatic History. By PAYSON JACKSON TREAT. (New York: Harper & Brothers. 1928. Pp. xi, 549.)

The Restless Pacific. By NICHOLAS ROOSEVELT. (New York: Charles Scribner's Sons. 1928. Pp. x, 291.)

Within the Walls of Nanking. By ALICE TISDALE HOBART. (London: Jonathan Cape. 1928. Pp. 243.)

Nothing is more encouraging to the American student of international relations than the steady and enlarging stream of volumes dealing with the Far East. Among recent studies in this field, those listed above are exceptionally important. Of the three, Professor Treat's is the longest and most detailed—the product of an historian. Mr. Roosevelt's is equally broad in its scope, but more general in its sweep and lighter in style—the work of an experienced observer and first-class journalist who has unusual powers of deduction and comparison. Mrs. Hobart's [and Mrs. Ayscough's] volume is in two

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parts: the first is a sketch of the foundation and superstructure of China's ancient culture; the other is a consideration of certain ugly and unhappy aspects of the dissolution of that culture. Dr. Treat gives us a landscape in oils, full of detail, lights and shadows. Mr. Roosevelt presents a clear and lively panoramic photograph. Mesdames Hobart and Ayscough offer a finely wrought cameo.

Professor Treat divides his work into three parts: China to 1895, Japan to 1895, and The Far East, 1895-1927. Parts I and II contain introductory accounts of the physical, racial, cultural, and political background of China and Japan. The early intercourse of both nations with Europeans is described briefly. The background chapters are particularly good, prepared as if they were for the American collegian, or general reader, whose spirit is strong (sometimes), but whose flesh too often weakens at the thought of attacking masses of difficult names and strange institutions. Factually, the book as a whole is almost beyond criticism; the fault—if fault there be—lies in the interpretation of certain of the facts. In dealing with China the author is commendably objective and impartial. It appears to this reviewer that he is less so in his account of the steps by which Japan rose to world power. Professor Treat takes an almost parental pride in describing the growth of an infant prodigy, and when the prodigy unwittingly makes mistakes we are assured that that is a phase through which all children pass. And when Japan consciously (if not conscientiously) does what it ought not to do, there is an almost episcopalian air of respectability in the way in which we are reminded that we are all miserable sinners and that there is no moral health in any of us. With a sublime disregard for Japan's sixteenth century relations with Korea, the Philippines, and China, it is hinted that imperialism is a disease which the Japanese contracted from westerners.

In the accounts of the steps by which Japan annexed Korea, and of the making of the twenty-one demands upon China in 1915, there is a probably unconscious tendency on the part of the interpreter to gloss over the realities of the two situations. On page 387 we find this apology for the first: "And having entered upon two wars because of the inability of Korea to defend herself, Japan very properly insisted that this should not happen again." And so, equally properly, after proclaiming "her policies of independence, reform, and the open door" (p. 387), Japan swallowed her disgustingly defenseless neighbor. After she had spent five years in partly digesting Korea and had thereby artificially enlarged her digestive tracts, she served her twenty-

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one demands on China looking toward a repetition of history in that country, which appeared equally incapable of self-defense. On page 462 we are told: "It is hardly necessary to give the text of the demands here, because, with the exception of certain of the treaty provisions relating to Manchuria which have already been discussed, they have lost their effect. The resentment which they caused, and its effect upon Sino-Japanese relations, are the really significant feature of the episode." We wonder.

With the exception of the unfortunate tendency just mentioned, there is nothing but praise for Professor Treat's painstaking work, which includes good maps and a splendid bibliography.

Mr. Roosevelt's volume, like Mr. Treat's, starts with a geographical orientation. In six parts and twenty chapters, Mr. Roosevelt states the problem of "conflicting tendencies of the nations in the Pacific": the geography of position, the geography of production, the conflict of policies, the imponderables, and the balance of power in the Pacific. There is not a trace of sentimentalism in this extremely realistic approach to the problem of the Pacific and the Far East. No American can remain Europocentrically minded after reading and cogitating upon the principles set forth in *The Restless Pacific*. The thoughts of Seward, Hay, and Theodore Roosevelt appear on the first page of Chapter I and serve as a spring-board for the author's dive into the not-very-pacific Pacific maëlstrom. The unrest in Russia, China, Japan, India, the Dutch East Indies, and the Philippines is discussed; that it is the policy and to the interest of the British Empire, the Netherlands, and the United States to maintain the *status quo* in the Pacific is unhesitatingly asserted. Wisely does Mr. Roosevelt direct the attention of Americans to the fact that the very term "Far East" is a European one, and for us a misnomer—that in reality the Far East is not, from our point of view, the Far East at all, but the Near East. Chapter VIII, on the pressure of population, is one of the best analyses of this problem in the English language. Lacking a bibliography, the work nevertheless has a score of valuable maps and analytical diagrams.

Within The Walls of Nanking is small in bulk but packed with thought. In some fifty pages, Mrs. Ayscough gives us a masterly philosophic essay on the nature of China's civilization. The reviewer knows of no other account so concise, penetrating, and withal so complete. Mrs. Hobart's account of the taking of Nanking by the Nationalists on March 24, 1927, is not mainly an analysis of the mean-

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ing of a movement, nor is it an historical account of the development of the movement itself. Rather is it mainly the breathless narrative of what happened in parts of Nanking during part of one day, and of symptomatic incidents in the months immediately preceding. It is, by all odds, the best account that has come out of China of the developments which took place in that unhappy country during the years 1926-27. It is not the type of book which ardent Chinese nationalists, Russian communists, or over-optimistic Americans will enjoy. It constitutes an unanswerable argument to those who advocate immediate abolition of extraterritoriality in China. It is written by two persons who know China—if such a thing is possible—and it will be appreciated by all students of the culture and foreign relations of that country.

HARLEY FARNSWORTH MACNAIR.

University of Chicago.

Soviet Russia in the Second Decade: a Joint Survey by the Technical Staff of the First American Trade Union Delegation. Edited by STUART CHASE, ROBERT DUNN, and REXFORD GUY TUGWELL. (New York: The John Day Company. 1928. Pp. xii, 374.)

For a decade, Russia has been the happy hunting-ground of observers drawn from all walks of life—diplomats, journalists, business men, educators, novelists. Reports of the Soviet government's political, social, and economic experiments have ranged from extreme scepticism to extreme enthusiasm. The various observers have, in general, been handicapped by the brevity of their stay in Russia, their lack of first-hand knowledge of Russia prior to 1917, and their ignorance of the Russian language.

The members of the American Trade Union delegation who spent the summer of 1927 in Russia, while similarly handicapped, have brought to their studies a fund of solid technical information and a praiseworthy impartiality. Their reliance on statistics as a basis of comparison between pre-war and post-revolution wages and prices may be questioned, in so far as figures relating to agriculture are concerned; the figures relating to industry may be accepted with less caution, in view of the fact that nationalization has facilitated the collection of statistics in this field.

The chapters which offer the greatest interest are those devoted to industry, Soviet finance, labor legislation and social insurance, education, and foreign concessions. The conclusion reached by the

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members of the Trade Union delegation is that Russia has emerged from the economic chaos of the period of civil war and intervention. The problem with which the Soviet government is now faced is that of effecting a balance of class interests as between town and village, and of preventing the emergence of economic aspirations which might threaten the union of the industrial workers and the poorer peasants. The solution of this problem is sought in the industrialization of a country primarily agricultural, and in the development of coöperative collectivism in the villages. The success of this experiment depends, on the one hand, on the possibility of securing sufficient capital, by means of credits and foreign concessions, and, on the other, on the elimination of the class conflict between the prosperous and the poor peasants by means of education and, if need be, repressive measures. In no modern state, perhaps, with the exception of Italy, has education been so definitely directed at the creation of a state of mind favorable to the experiments of the government. The significance of the mental transformation effected in Russia cannot be over-emphasized, and it may be regretted that the report of the Trade Union delegation, technically sound, does not reflect the fermentation of Russian thought.

VERA A. MICHELES.

Foreign Policy Association,
New York City.

American Policy Toward Russia Since 1917. A Study of Diplomatic History, International Law, and Public Opinion. By FREDERICK LEWIS SCHUMAN. (New York: International Publishers. 1928. Pp. ix, 399.)

This interesting survey, the most complete story of Russian-American relations since the Revolution which has yet appeared, rests on documentation of very uneven value. Despite the author's access to some hitherto unpublished diplomatic correspondence of 1917 and 1918 in the archives of the Department of State, the amount of new material uncovered is not large. Although he has used extensively printed sources in English, Dr. Schuman appears to have read nothing in Russian, and to have relied largely on the *New York Times*, *Current History*, and the writings of journalists. Undaunted by the limitations of his sources, he ventures conclusions on many points on which adequate evidence seems to this reviewer not yet available.

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In the sketchy treatment of Russian-American relations prior to 1917 reference is made to only one of Professor Golder's indispensable articles. The attempt to elucidate American intervention in Russia fails to emphasize the importance of the German victories in March, 1918, and the view, so forcibly expressed in the Allied appeals to the United States, that the war would be lost unless the Russian front could be reconstituted. Dr. Schuman's researches in the *Congressional Record* seem not exhaustive. He fails to mention Senator Borah's significant plea of July 13, 1918, for military as well as political intervention in Russia.

Allied and American intervention in Russia is summed up (p. 309) as "an ill-considered act of policy, wholly without justification in law, the failure of which subjects the governments involved to full responsibility for compensating the aggrieved party for the losses suffered from it." A chronological treatment of American policy is followed by an evaluation of the grounds upon which diplomatic recognition of the Union of Socialist Soviet Republics is withheld. Dr. Schuman argues in favor of recognition. "As to propaganda, the earlier fears that Soviet consular and diplomatic agencies would be made channels for its extension would seem to be no longer well-founded (p. 334). He concludes that to those who believe implacable war between capitalism and communism undesirable and avoidable, "the American policy toward Russia must appear worse than futility."

Dr. Schuman finds it "difficult to resist the temptation to condemn the triviality and futility" of the activities of the Root mission (p. 43). He dates the beginning of the Red Terror in September, 1918 (p. 107). The Harriman manganese concession, abandoned soon after his book was published, appeared to him "to be working to the satisfaction of both parties" (p. 252). Is it true that "the Russian Embassy at Washington declared its unqualified opposition to the lifting of the blockade" (p. 173)? Or that "abhorrence of Communism overshadowed all else" in the rejection of the Soviet proposal in 1928 for immediate abolition of all land, sea, and air armaments?

JAMES P. BAXTER, 3RD.

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The Work of the International Labor Organization. By the National Industrial Conference Board. (New York: National Industrial Conference Board, Inc. 1928. Pp. xii, 197.)

In 1922 the National Industrial Conference Board published, as

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one of its Research Reports, an excellent study of the history, organization, and procedure of the International Labor Organization established by Part XIII of the treaty of Versailles. That early report has now been supplemented by a second study on *The Work of the International Labor Organization*. There is a short chapter on the structure of the Organization, but the burden of the volume is, as stated in the foreword, "a review of all proposals made by the International Labor Organization for the betterment of labor conditions" and "a discussion of the obstacles which made the adoption of internationally uniform labor standards difficult or impossible" (p. v). The survey here given of the work of this important international agency is unusually comprehensive in its scope and penetrating in its analysis, and to the textual discussion is added an appendix containing twenty-eight tables showing graphically the exact status of the several draft conventions adopted by the International Labor Conferences and of the domestic legislation applying the terms of these conventions.

The chapter entitled Summary and Conclusions provides an admirable review of the obstacles and difficulties confronting the International Labor Organization, and of its failures and successes in overcoming these obstacles. One may on occasion be inclined to differ with particular conclusions reached, notably with respect to the attitude of the United States (pp. 136-137), but on the whole these conclusions are reached only after the presentation of so much evidence, and are stated with such moderation, that one is impressed with their evident soundness. Without attempting to restate all these conclusions, one can best summarize the general view presented by the following quotation: "The agency so established by the Treaty has since grown extensively in its organization, its functions, and its significance in international labor relations. In many respects it may be considered the most vigorous and active section of the machinery of the League of Nations, or at least the most active agency of international organization. Created under exceptional, perhaps abnormal, circumstances, it has shown its ability to survive and grow and assume a real place in the increasing manifestations of international life" (pp. 3-4).

These two reports by the National Industrial Conference Board (the present one and the earlier report of 1922) together constitute perhaps the most important study, in the English language, of the International Labor Organization.

CLARENCE A. BERDAHL.

University of Illinois.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Development of Governmental Forest Control in the United States, by Jenks Cameron (Johns Hopkins Press, pp. viii, 471), is one of the most recent studies in administration prepared under the auspices of the Institute for Government Research. Unlike most of the other volumes, which have been of a somewhat technical nature, this book is written in a semi-popular style and not only weaves the intricate details of American forestry legislation and administration into a readable story but dramatically portrays the important part which forests have played in American life and history. In the words of the author, an "attempt has been made . . . . to get down beneath the landscape gardening of propaganda to the bed rock of 'things as they are,' and to tell exactly the tale of a particular American development that has been from first to last a cross-section of American development in general." In the opinion of the author, the Clarke-McNary Act passed in 1924 gives the nation at last the real beginning of a genuine forest policy. On the practical side, the act merits praise because of the enlarged possibilities of coping with the fire problem, and because of the clauses "aimed at the encouragement of forest-growing by a solution of the tax problem, as well as those designed to foster forest production and protection by the farmer, the owners . . . . of one third of the potential forest area of the country, ... and those providing for the gradual inclusion within national forest areas of those portions of the public domain, and of certain of the governmental reservations, ascertained to be primarily of forest value." Of greater importance is the fact that the Clarke-McNary Act represents a spirit of coöperation between diverse elements. Another of the series of studies in administration, of a more technical nature, is Henry P. Seidemann's *Manual of Accounting, Reporting, and Business Procedure for the Territorial Government of Hawaii* (pp. xxviii, 570). *The United States Civil Service Commission: Its History, Activities, and Organization* (pp. xii, 153), by Darrell H. Smith, and *The Food, Drug, and Insecticide Administration* (pp. xii, 134), by Gustavus A. Weber, are numbers 49 and 50 respectively of the Service Monographs of the United States Government issued by the Institute. These latter volumes are uniform in method of treatment with those which have previously appeared. The monograph on the Civil Service Commission will naturally be of more general interest.

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Reports of two important committees of the National Municipal League have been published in pamphlet form. The committee on federal aid to the states has issued a report on *Federal Aid to The States* (pp. 40), prepared by its chairman, Austin F. Macdonald. The committee records "its belief that federal aid to the states is a sound principle of administration, and ought to be continued." The reasons for this conclusion are that federal aid (1) has stimulated state activity, (2) has raised state standards, (3) has been consistently administered without unreasonable federal interference in state affairs, (4) has accomplished results without standardizing state activities, (5) has mitigated some of the most disastrous effects of state politics, (6) has placed no unreasonable burden on any section of the country, and (7) that federal administration of the subsidies has not been influenced by partisan politics. Although unqualifiedly endorsing the principle of federal aid, the committee points out defects in the individual laws, and also suggests certain general changes that ought to be made in the interest of greater efficiency. Among the latter are the recommendations that certain bureaus should become more familiar with every detail of state work, and that others, while steering a middle course which will raise state standards and yet retain good state-will, should keep a more firm hand on the reins. Finally, it is recommended that Congress should make larger appropriation for the administration of federal aid. The second report is that on a *Model Municipal Budget Law* (pp. 8), submitted by a committee of the same name, of which Carl H. Pforzheimer is chairman and C. E. Rightor secretary. The draft of the proposed law is preceded by a brief summary of its chief features.

Among the last of the recent outpouring of books on political parties come two Macmillan publications. *The American Party Battle* (The World Today Bookshelf, pp. 150), by Charles A. Beard, is a thumbnail sketch whose bold strokes block in only the most significant features of the political scene. Movements are observed from the economic viewpoint. The trees do not hide the woods; neither "principles" nor personalities obscure fundamental interests. "Wealth and talents," "dirt farmers," "mechanic-labor wings," and "lower orders" loom large, with judges, banks, battleships, tariffs, and income taxes filling in the picture. The book may well be described as a vest-pocket *Rise of American Civilization*. Quite different is *The Story of the Democratic Party*, by Henry Minor (pp. 501). A leader of conservative

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Southern Democracy narrates with great particularity the events of his party's history. "Keynoters" and candidates, planks and ballots, are recorded in detail. Politicians and minor parties long since forgotten come in for passing reference. No pretention is made to original research or startling disclosure. If the *Story* has any hero, Cleveland seems to fill that rôle rather than Jefferson, Jackson, or Wilson. Though not always objective, much of the book is as unexceptionable as the *World Almanac*. For an interpretation, we may consult Beard; to locate a fact, we will turn to Minor.

The Macmillan Company has recently published *Documents and Readings in American Government* (pp. 928), by Professors John M. Mathews and C. A. Berdahl, of the University of Illinois. The book contains a wide range of useful materials covering the whole field of American government—national, state, and local. All are arranged in such form that they can be used to supplement any of the various available text-books. The distinctive feature of the volume is the strong predominance of official documentary material. For example, the chapter on "The State Constitution" contains a copy of the provision for a constitutional convention from the Illinois constitution, an opinion of the attorney-general of North Dakota concerning the powers of the legislature, a resolution of submission by the Illinois legislature, a governor's proclamation, a discussion of the procedure and rules of a convention from one of the *Illinois Constitutional Convention Bulletins*, an address of submission by the Illinois Constitutional Convention, and an article by Lawrence B. Evans on the Massachusetts convention of 1917–19, reprinted from this *Review*.

Teachers of American government will find an exceedingly useful aid to their work in *Working Manual of Original Sources in American Government*, by Milton Conover (Johns Hopkins Press, pp. ix, 167). This little volume, first produced in 1924, has now been revised and enlarged. Two new chapters have been added, dealing with political belles lettres and political theory; some additional material has been added to other chapters; and the whole has been rearranged on a somewhat more logical basis. There are numerous exercises and assignments, dealing with the important governmental activities in the United States and introducing the student especially to the documents that illustrate the active functioning of our political system. These documents include such as the President's message, reports of heads of departments, House and Senate documents, committee hearings,

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the Congressional Record, United States statutes, and the like. Comparatively little attention is given to state and municipal government, but the author promises to remedy that defect by producing similar manuals for each of these fields. Unique in plan, comprehensive in scope, methodical in design, this manual should prove stimulating wherever library facilities are such as to permit its general use by students. C. A. B.

The Constitution of the United States, by Bertha Moser Haines in collaboration with C. G. Haines (F. S. Crofts and Co., pp. 319), is an effective analysis of the Constitution and its antecedents, well suited to the needs of advanced high school classes or junior colleges. One third of its space deals with the colonial and revolutionary background of the Constitution; another third presents a brief but clear exposition of the provisions of the instrument; while the remainder is devoted to the "adaptation of the Constitution to the needs of the nation." This presents not only an analysis of the processes of constitutional expansion but a discussion of some important principles embodied in the American constitutional system. There are useful short bibliographies and problem assignments.

Persons interested in the technique of military administration will find much of value in *The Organization and Administration of the Union Army, 1861–1865*, by Fred Albert Shannon (two vols., Arthur H. Clark, pp. 323, 348). The work undertakes "to show how the Union changed from a peace to a war basis, to describe the evolution of the military policy and of the army, and to outline the interrelations of state and national governments in the solution of various problems of recruiting, equipping, supplying, and training the soldiers." Official records have been used extensively, as well as newspapers, magazines, memoirs, autobiographies, correspondence, diaries, and military histories. There are chapters on "the slacker problem," the conscientious objector, the state-rights principle applied to the army, the daily life of the soldier, and other interesting matters. The military control of railroads is not covered.

D. Appleton and Co. has added to its list of excellent biographies *Bryan: The Great Commoner*, by J. C. Long (pp. xv, 422). The author brings out the strong features and the accomplishments of Bryan as well as his weaknesses, picturesque qualities, and idiosyncracies. The result is an impartial but readable account of the stormy

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career of the Peerless Leader, who was always in the thick of a fight, always crusading against some alleged wrong, and engaged in some kind of a conflict up to the day of his death. The author regards Bryan's contribution to his age as "primarily his belief in the inherent dignity of the common man," and his most lasting achievement as the arbitration treaties with thirty nations, which, moreover, were ratified without serious dispute by the Senate. One cannot help wishing, however, that Bryan's career had not ended with such an anti-climax as the Dayton fiasco.

Readings in American Citizenship, by John T. Greenan (Houghton Mifflin Co., pp. 436), is a volume of excellent selections covering a wide range and well adapted for collateral reading in the secondary schools.

Messrs. Ginn and Company have issued a new school text-book, *Community and Vocational Civics* (pp. 750), by Howard C. Hill. It is broader in scope than most books of its type and is marked by the good workmanship which has characterized Professor Hill's earlier writings.

STATE AND LOCAL GOVERNMENT

Public utilities and their regulation engages the attention of Professor O. C. Hormell in two pamphlets which deserve the attention of anyone interested in that important and complicated subject. *Maine Public Utilities* (Bowdoin College Bulletin No. 164, pp. 69) discusses the governmental problems growing out of the public utility situation, the historical development of utilities in Maine, the public utilities commission and its work, rate regulation, valuation, and the special questions arising in connection with water power, especially the transmission of hydro-electric power beyond the limits of the state. If the state is to "escape the exploitation of highly centralized monopolies on the one hand, or government ownership on the other," Professor Hormell points out that the supremely important duty of regulation should not be imposed upon a commission that is overburdened with work and supported by a staff that is both undermanned and underpaid. The author's second contribution is *Electricity in Great Britain: A Study in Administration* (supplement to the *National Municipal Review*, Vol XVII, No. 6, pp. 363–385.) The study is the result of an investigation conducted by the author in England during the spring and summer of 1927 and explains the principles and workings of the

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Electricity (Supply) Act of 1926, which competent authorities have considered as "undoubtedly the most important" among the measures passed by Parliament in 1926. The act creates "power zones approximately coterminous with the several great industrial districts," provides for the interconnection of the zones as rapidly as possible and the regulation of prices both to distributor and consumer, attempts to standardize frequency in order to bring about "an economical flow of electrical energy throughout the nation-wide net-work of transmission lines," and sets up a "state agency to reform and regulate the generation and transmission of electricity, and to coöperate with existing agencies in putting into effect the reorganization of the electrical industry."

The Division of Building and Housing of the United States Department of Commerce has extended its valuable work in the promotion of city planning by issuing *A City Planning Primer* (pp. 18), *A Standard City Planning Enabling Act* (pp. iv. 54), *A Survey of City Planning and Related Laws in 1927* (pp. 10), and *A Preliminary Tabulation of City Planning Commissions of the Larger Cities in the United States* (pp. 23). The first pamphlet explains the need for city planning, the main features of a city plan, the execution and financing of a plan, and the problems of regional planning. The second bulletin not only contains the text of a model city planning enabling act, but also includes numerous footnotes and explanations for the purpose of adjusting the act to local conditions. Both of these publications have forewords by President-elect Hoover. Another recent publication of the Division of Building and Housing is a mimeographed study, *Zoning Progress in the United States* (pp. 46), which includes in Part I an excellent discussion of "Zoning and the Courts," by Edward M. Bassett, and in Part II a detailed list of zoning laws and ordinances enacted throughout the country. Frequent supplements are issued bringing the information regarding the progress of zoning and city planning down to date.

The publication of *A Report on the Street Traffic Control Problem of the City of Boston* (pp. xv, 435), prepared by the Albert Russel Erskine Bureau of Harvard University under the direction of Dr. Miller McClintock, while following the same general plan as the surveys made for Chicago and San Francisco (noted in the *Review*, vol. xxi, p. 693; vol. xxii, p. 496), presents certain new features. A large part of the study is devoted to the flow of traffic, and somewhat

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more attention is given to the problems of administration than in the earlier reports. The Boston survey also was more complicated because of the fact that the streets are extremely narrow and the street pattern more irregular, while the city itself is the center of a metropolitan district studded with about thirty-nine other cities and towns.

An interesting report on *The Coroner and Medical Examiner* (pp. 101) has been published by the National Research Council. This is the result of a detailed survey by Professor E. M. Morgan, of the Harvard Law School, and Dr. Oscar T. Schultz, acting under the auspices of a committee on medico-legal problems. Detailed surveys were made of the workings of the coroner system in New Orleans, San Francisco, and Chicago, and the results were combined with material from former surveys of the coroner system in New York City, Cleveland, and Missouri. The coroner system has been compared with the medical examiner system in New York City and Boston, to the distinct advantage of the latter system. The report recommends that the office of coroner be abolished and that of medical examiner established with a competent staff, and that the non-medical duties of the coroner's office be vested in the appropriate prosecuting and judicial officers.

Recent publications of the League of Minnesota Municipalities deal with *Tax Rates, Assessed Valuations, and Public Indebtedness in Minnesota for 1928* (pp. 32); *Fire Department Statistics in Minnesota for 1928* (pp. 16); *and Fire Protection and Fire Prevention Ordinances* (pp. 12).

The Proceedings of the Tenth and Eleventh Country Life Conferences held in 1927 and 1928 have been published by the University of Chicago Press (pp 161). The portions of greatest interest to students of government are the report on rural health and sanitation by Walter Brown, the address on tax legislation by Charles L. Stewart, and that on benefits from taxation by M. H. Hunter.

Students of rural local government will derive some help from Part V of Newell L. Sims' *Elements of Rural Sociology* (Crowell, pp. xiv, 698) devoted to "The Structural Element" and constituting about one-fourth of the book. This part deals with the organization of the rural community, past and present.

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FOREIGN AND COMPARATIVE GOVERNMENT

Le Status des Dominions Britanniques en droit constitutionnel et en droit international, by Edmond-Edouard Buchet (Recueil Sirey, Paris, pp. 138), is a doctoral treatise compiled largely from the available secondary sources. It is an elementary, and in places a superficial, résumé of the development of the status of the dominions in the British Commonwealth of Nations that was recognized by the formal Balfour Committee's report in the Imperial Conference of 1926. The value of the book lies in adding to the work of A. B. Keith, H. D. Hall, Lionel Curtis, P. Hurd, R. Jebb, and other British commentators a bibliography and a partial digest of articles which have appeared since the war. The treatment is purely legalistic, although the author recognizes the divergence of law and practice. As an analysis it is clear and logical, but it illustrates by an excess of those virtues the difficulty which the French have in conceiving adequately the muddled working of British institutions. No detailed study seems to have been made of the present functioning of the Judicial Committee of the Privy Council, of the questions raised by the vice-regal status of the governors-general and the status of the governors in the Australian states, nor of the functions which the governor-general must fulfill on the "native questions" commissions in South Africa, or the method of amending the British North American Act in the future.

W. Y. E.

Les Editions Rieder have published a second edition of their valuable little *Manuel des Partis Politiques en France* by G. Bourgin, J. Carrère, and A. Guérin (pp. 302). It will be recalled that the first edition was offered to " . . . . those Frenchmen who have the commendable desire to see clearly the issues of the electoral battle." It was the feeling of the authors that in order to accomplish this end they ought "to compare the programs and tactics" of the different parties. Similarly, this second edition is offered to these self-same voters in 1928, enlarged and brought up to date. At the same time, it is supposed to be an *instrument du travail* for the historian of France and of the parliamentary régime. As before, the study deals, in five parts, with the Right extremists and the great organizations outside of the strict party organization. In each case, it treats the various sub-groups in special paragraphs, taking up history, program, and structural organization. In another edition it might be worth while to give a few general data regarding the relative strength of these

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groups and their distribution in the country. Though students of political problems in the United States may feel a little sceptical about the significance of platforms and programs in modern party struggles, they will welcome this authoritative guide to the masks, if not the real *dramatis personae*, of the French political pageant of today. C. J. F.

My War Memoirs, by Eduard Beneš (Houghton Mifflin Co., pp. 512), is an English translation from the original Czech edition of the author's war recollections. Much of the material of minor or local interest has been omitted, and the leading motives of the story have in this way been brought out more forcefully. Beneš needs no introduction to the historically-minded public, but the reader may be reminded that this volume, like Masaryk's larger *World Revolution*, belongs not only with the prime sources for the history of Czecho-slovak resurrection, but also with the best and most interesting war literature in the broader sense. The Czech leaders were men of high culture and lofty ideals, and they played a part in the story of the great conflict which was almost out of proportion to the issue involved. The book reflects the author's attractive personality, and is written with unusual grasp and understanding. A man like Beneš, writing on an epic subject, could hardly fail to produce a narrative of importance, interest, and fascination.

The Verlag R. Oldenbourg has just published a seventh edition of Friedrich Meinecke's now famous *Weltbuergertum und Nationalstaat* (pp. x, 558). That such a book should see a seventh edition is in itself proof of its importance. Few books have made such a profound impression upon the younger generation of German historians. The main addition of the present new edition is to be found in the chapter dealing with the constitutional convention of 1848, which contains material of the constitutional drafting committee that has become available recently through the publication of the political papers of Droysen. C. J. F.

The New Democratic Constitutions of Europe, by Agnes Headlam-Morley, is among recent publications of the Oxford University Press (pp. 298). The book deals with the historical origins of these new constitutions and with various topics in the structure of government, treated in a comparative way. Of special interest and value are the discussions relating to universal suffrage and proportional repre-

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sentation, second chambers, and economic councils. There is a useful bibliography.

Sir John A. R. Marriott has written a small volume on *How England is Governed* (Oxford University Press, American Branch, pp. 112) which aims to give a brief and up-to-date account of the government of Great Britain, together with a short chapter on the Empire. The author not only gives the present-day facts about English political institutions, but traces their origin and development.

INTERNATIONAL LAW AND RELATIONS

The Royal Institute of International Affairs continues its valuable work in publishing the *Survey of International Affairs, 1926* (Oxford University Press, American Branch, pp. 565), by Professor Arnold J. Toynbee, aided by R. J. Stopford, H. Lauterpacht, and M. S. Birkett. This volume completes the survey of international events between 1918 and 1926 begun in other volumes, and for China carries events to February, 1927. Part I deals with world affairs, emphasizing the League of Nations and the attitude of the United States toward the League and the World Court as well as toward war debts and reparations. In Part II attention is particularly given to southeastern Europe, though the international steel cartel is also considered. In Part III more than two hundred pages are given to the Far East and the Pacific. Here the Chinese civil war, with struggles in regard to tariffs, extraterritoriality, denunciation of treaties, Soviet influence, etc., are discussed. The problems of Japanese foreign policy when facing China on one side and the western nations on the other are shown, together with the reversal in recent years of Japan's former aggressive attitude toward China. The World War transformed the Pacific "from a zone of international insulation into a field of international tension," as was recognized in the Washington Conference of 1921–22. Changes in the Philippines are interpreted broadly and the disturbances in India well described. Brief reference is also made to Chinese immigration in the tropics. Appendices contain supplementary material and an excellent chronology of events and treaties. There is a good index, and there are five serviceable maps.

The second edition of Professor Graham H. Stuart's *Latin America and the United States* (The Century Co., pp. viii, 465) has been revised and expanded more than sixty pages to include material cover-

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ing the past six years. New interpretations of the Monroe Doctrine have been noted and commented upon, the chapters dealing with Mexico and the countries of the Caribbean have been considerably enlarged, and the recent phases of the Tacna-Arica dispute have received special attention. The author concludes that "from the hitherto unsatisfactory results of acting in the rôle of peacemaker President Coolidge might begin to question whether it would not have been fairer to him if such a problem had been turned over to the World Court for a decision and to the machinery of the League of Nations to make the decision effective" (p. 408). Closing the ten pages devoted to the Fifth and Sixth International American Conferences, Professor Stuart declares that the representatives of the Latin American states could leave Havana "with the assurance that they had at last come into their own as equal participants in the fraternity of American nations" (p. 29). Although the Harding administration "made a unique record in its efforts to settle a number of outstanding and thorny disputes in the Caribbean area" (p. 6), "unfortunately, the Coolidge administration has not been able to point with pride to the results of its dealings with its Latin American neighbors. Neither by training, experience, nor temperament was Secretary Kellogg suited to handle the delicate problems which faced the United States in Mexico and the Caribbean" (p. 7). Although the lists of supplementary readings have been revised, Perkins's *The Monroe Doctrine*, Hill's *Roosevelt and the Caribbean*, and Dennis's *Adventures in American Diplomacy* are not included. J. P. B.

The Law of Nations: An Introduction to the International Law of Peace, by J. H. Brierly (Oxford University Press, American Branch, p. 222), although not pretending to be anything more than an introduction, and written with the object of giving the general reader who desires to learn something about international relations an idea of the subject, is a work which the advanced student can read with profit. Its value rests not only in the statement of the fundamental principles of international law in a clear and concise manner but in the fact that the author remains in the domain of international realities and does not soar into the clouds of academic internationalism. As Mr. Brierly states, "the law of nations is . . . . just one institution among others which we have at our disposal for the building up of a saner international order." His final chapter on international organization deserves special mention. He emphasizes the value and func-

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tions of such organizations as the International Telegraph Union and the Universal Postal Union and points out that "the creation of the League of Nations, therefore, in 1919, was not the introduction of a wholly new principle into international life but the logical outcome of a movement which had been gathering force for many years. It is distinguished from the previous steps in this movement by its generality." When one recalls the harm which has been done to the League of Nations in the United States by the extreme claims which some of its enthusiastic but misguided academic friends have made for it, one may be pardoned for emitting a sigh of relief at Mr. Brierly's statement that "the League is not a power outside of or above the states which compose it, but an institution which they have set up themselves, and which they can use or not, and use well or ill, as they think fit." E. C. W.

The World Book Company has brought out a fourth edition of Isaiah Bowman's *The New World: Problems in Political Geography* (pp. v, 803), which has been completely revised to conform with the events since 1921 when the first edition appeared. To make room for the large number of maps, of which there are 257, and for a discussion of recent treaties, the photographs which appeared in the early edition have been omitted. In order to provide a better understanding of the major problems raised in connection with the various countries and regions, the first chapter contains a discussion of such matters as mandates and colonies, debts and reparations, raw materials, the distribution of land, communication and transit, limitation of armaments, minority populations, boundaries, and international relations. The work forms a rich background for teachers and students of foreign governments and international problems. Another useful tool which emphasizes geographical factors is a syllabus on *The History of the Americas* (Ginn and Co., pp. xxii, 314) by H. E. Bolton, director of the Bancroft Library at the University of California. This syllabus "presents a general survey of the Western Hemisphere from the discovery to the present time." In this way the history of the United States is put in a new setting.

The Doctrine of Necessity in International Law, by Burleigh C. Rodick (Columbia University Press, pp. 146), does not restrict itself to any one part of international law or to any period. In scope, it embraces the entire field, its premises being built upon juristic data

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running back to Grotius. The author has succeeded, if his aim is that of merely indicating the tremendous extra-legal force wielded today by states under the guise of necessity. But merely touching, as it does, on such broad fields as national jurisdiction, pacific intercourse of states, and military necessity, the work contains serious gaps. For the reasonable conclusions reached the reader wants assurance in the form of substance. In dealing, for instance, with the amount of legal validity possessed by any doctrine of necessity, some space should be devoted to considering whether necessity is not anterior to any system of law, and whether necessity does not, in practice, form the precedent which in due course of time grows into usage and ultimately becomes part of the law of nations. In proposing, as a conclusion, that the doctrine of necessity as a legal principle be confined strictly to circumstances expressly covered by law, the author, in effect, gratuitously bestows upon jurists the colossal task of first codifying the entire field of international law.

The Naval War College has recently published another of its valuable studies on *International Law Situations, with Solutions and Notes*. The particular situations discussed in this latest volume, which is that for 1926 (Government Printing Office, pp. vii, 124), relate to continuous voyage, the use of submarines, the right of angary, and the status of aircraft in neutral ports. As in previous years, the discussions in 1926 were led by Professor George Grafton Wilson, and constitute an important contribution to an understanding of what may be practical application of certain doctrines of international law. C. A. B.

Graf Benckendorff's Diplomatischer Schriftwechsel, edited by B. von Siebert (Berlin and Leipzig: Walter de Gruyter and Co., three volumes), represents the last stage in the history of the well-known De Siebert documents, which first appeared in book form under the title *Diplomatische Aktenstücke zur Geschichte der Ententepolitik der Vorkriegsjahre*, and in English translation as *Entente Diplomacy and the World*. In this definitive edition the late De Siebert has omitted all the correspondence of Isvolski, which can now be found in other collections, but has revised the translation of the correspondence between St. Petersburg and London and has added over three hundred documents which have not hitherto been published. Many of these are of little value, but the one hundred and eighty-odd documents

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dealing with the London Conference of 1912-13 are of great interest and importance. These alone would make the new edition valuable to the historian. It is greatly to be regretted that there is no indication as to what is new in these volumes; the scholar is left to work it out for himself. On the other hand, the rearrangement of the entire material in chronological order is an improvement which makes this edition far more usable than the old one. W. L. L.

Ten years after the armistice, William Martin, foreign editor of the *Journal de Genève*, presents a pageant of *Statesmen of the War: In Retrospect* (Minton, Balch and Company, pp. xiii, 369) in which some twenty-three leaders of the war period move across the stage. Each one is made to reënact his part while the author gives a brief curtain talk interpreting the actions of each and appraising his character and achievements. The author includes not only the outstanding figures such as William II, Francis Joseph, Nicholas II, Poincaré, Lord Grey, Briand, Hoover, Wilson, Lloyd George and Clemenceau, but Jon Bratiano of Rumania, who "finally became entangled in his own subtleties;" Colonel House, "a disinterested man" with "a thirst for power;" Gustave Ador of Switzerland, who is described as "the incarnation of peace;" President Masaryk and Dr. Beneš, "two statesmen really worthy of the name;" Paderewski; and Pachitch of Serbia, who "ruled his little nation with a rod of iron." The book is written in a very interesting style and with a thorough understanding of the figures and events of the period. It is not merely another book in the great flood of post-war literature, but a volume which has a distinctive value because of its general fair-mindedness and keeness of interpretation. The fact that the author is Swiss helps explain this.

The Hungarian-Rumanian Land Dispute, by Francis Deák (Columbia University Press, pp. ix, 158), although written with a definite purpose in mind, not only presents a study of Hungarian property rights in Translvania under the treaty of Trianon but also considers issues which will be of great interest to the student of international law. Rumania objected to the jurisdiction of the mixed tribunal set up under the treaty, and upon the objection being overruled, the Rumanian member withdrew and his government declined to proceed. The resolution of the Council of the League of Nations at its session of March, 1928, providing that the Council should name two additional members of the tribunal, while the Rumanian mem-

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ber should be "restored," and Rumania's refusal to agree to such arbitration save on the condition that the two supplementary judges should be bound in advance by certain rules, are discussed in critical terms by Dr. Deák. The issues involved present "two fundamental questions . . . . which obviously carry more import in relation to the progress of international law in general than they do in relation to the contentions of the parties to the particular controversy" (p. 158). The two questions are as follows: 1. "How far, if at all, can the Council of the League of Nations interfere with the administration of international justice?" 2. "In case such interference takes place, what effect will this interference have on the development of international arbitration?" E. C. W.

China and World Peace, by Mingchien J. Bau (Revell, pp. 194), in the words of its author, aims "to review the main factors in the arena of Chinese international politics since the Washington Conference, to treat of the leading issues involved in the situation, and to point out a way for the readjustment of China's foreign relations, with a view to hastening China's entrance into the family of nations as a full equal, averting any unnecessary conflict of ideas, policies, and forces, thereby in a small way promoting world peace." The important chapters are on unequal treaties, Chinese nationalism, the new British policy in China, tariff autonomy, extraterritoriality, concessions and settlements, and readjustments of China's treaty relations. Another recent book of a more popular nature is *The Soul of China,* by Richard Wilhelm, translated from the German by J. Holroyd Reece (Harcourt, Brace and Co., pp. 382). The book is made up largely of the author's impressions in his travels; but at the beginning of the volume there is an interesting account of recent political changes in China, and more especially of the modern writers and reformers whose ideas have influenced these changes.

International Economic Relations, by John Donaldson (Longmans, Green and Co., pp. 674), is a useful study not only in the field of economics but for any comprehensive survey of international relations. Part I takes up in conventional form the physical and social elements which are supposed to form the basis of the international economic order. Part II embodies an ambitious attempt to build up a "structural and industrial basis of international relations." The chief contribution of the work lies in its survey of those economic problems

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which today possess international significance, such as the chapters on economic access, world trusts, monopoly and interdependence of essential materials, petroleum and diplomacy, and the international character of the bases of industry. Not so reassuring is the attempt to evolve a "world economy" of an organic nature, based on world industry, world trade, world shipping, and world finance. An undue strain is here in evidence, with economic impulses and factors stretched to cover the world economy which the author endeavors to establish. John Carter's *Conquest; America's Painless Imperialism* (Harcourt, Brace and Co., pp. 348) is an interpretation of American imperialism featuring peaceful conquest in contrast with the political and military conquest of the old world order. In popular form, the author considers the basis of American world power, the struggle between America and Europe, and the future of American expansion.

Professor Toynbee admits that the title which he has given to a small volume, i.e., *The Conduct of British Empire Foreign Relations since the Peace Settlement* (Oxford, pp. 126), is "a long and rather clumsy" one. It is, however, descriptive, and the Royal Institute of International Affairs has justly thought the volume worthy of publication in its series. The constitutional aspects of the recent changes in the conduct of foreign relations consequent upon membership of the states of the British Commonwealth of Nations in the League of Nations, their diplomatic representation in foreign states, and their influence upon general foreign policy are well and briefly presented.

The Stafford Little lectures for 1928, delivered by Charles Evans Hughes on *Our Relations to the Nations of the Western Hemisphere*, have been published by the Princeton University Press (pp. 124). The latter portion of the book deals with general plans of arbitration and the prospects of international organization.

The first volume issued by the Institut Français de Washington is *The Treaties of 1778 and Allied Documents* (pp. xxv, 70), edited by Professor G. Chinard, with an introduction by Dr. James Brown Scott, and published by the Johns Hopkins Press in a format worthy of the subject. The text of the treaties reproduces the original manuscripts in the Department of State.

Dr. Milton Offutt has reviewed briefly and favorably the many cases in which it has been found necessary, or has been believed to be de-

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sirable, by the United States to use its armed forces, particularly the navy and the marines, on foreign soil. His survey appears in the Johns Hopkins University Studies in Historical and Political Science, under the title *The Protection of Citizens Abroad by the Armed Forces of the United States* (Series LXVI, No. 4, pp. viii, 170).

In three lectures published by the University of Pennsylvania Press under the title *American Diplomacy in the Modern World* (pp. vi, 127), Arthur Bullard seeks to demonstrate that the "new mechanism at Geneva is as much superior to former methods as the new Ford is to the pre-war model."

The international aspects of the opium trade and the various attempts at restriction are the subject of a very thorough study by Michel Liais entitled *La Question des Stupéfiants Manufacturés et L'Oeuvre de la Société des Nations* (Paris, Société du Recueil Sirey, pp. 208).

POLITICAL THEORY AND MISCELLANEOUS

The work of one of the most important English thinkers of today is summarized in *The Social Theories of L. T. Hobhouse*, by Dr. Hugh Carter (University of North Carolina Press, pp. 137). Dr. Carter has performed a real service. Although the works of Hobhouse are available, the rich variety of his contributions, scattered as they are through many volumes, and including significant contributions to psychology and to anthropology, as well as to political philosophy, ethics, and the development of social institutions, makes a summary of considerable value. And this is particularly true of a book addressed, no doubt, primarily to American readers, who are, as Dr. Carter notes, far less familiar with the work of Hobhouse than his importance warrants. The reason, doubtless, is the one surmised by the author of this critical study: Hobhouse is, among positivistic American political scientists, under the dreadful suspicion of being a philosopher, and of having been guilty of heresy against the academic separation of disciplines that a growing specialization has produced, and that now is treated as sacrosanct. Yet it is precisely his wide and sound acquaintance with many allied fields of social studies that makes Hobhouse an outstanding social philosopher. In the opinion of the reviewer, he is a far more important figure than Dr. Carter's study would indicate—perhaps the soundest and best equipped social theorist in the English-

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speaking world. That is a large claim, and it may indicate some of the grounds on which Dr. Carter's study, competent as it is in some respects, seems wanting in powers of interpretation, because of a lack of adequate philosophical perspective. The reviewer would suggest a somewhat different interpretation and estimate, particularly of such contributions to politics as *The Metaphysical Theory of the State* and the classic little volume, *Liberalism*. W. Y. E.

Persons concerned with political measurements will be interested in the last part of F. Stuart Chapin's *Cultural Changes* (Century Co., pp. xix, 448). Professor Chapin suggests that there is some evidence that political institutions, like other cultural forms, pass through stages of growth or integration, maturity or equilibrium, and decay or disintegration. Applying this principle of cyclical change to social and political institutions such as poor relief legislation and administration, commission government, and the city-manager plan, Dr. Chapin shows that, first, as a changing order occurs, a strain is created which leads to the enforcement of certain mores or ideas, next comes a period of special legislation of a trial-and-error or experimental type, and finally general legislation that integrates successful group practice. Considerable space is given to a discussion of the part which invention has played in cultural change, and the eleventh chapter considers political inventions with special reference to the commission form of government and the city-manager plan. In the twelfth chapter the growth of social activities is studied, using the extension of governmental functions in Detroit and Minnesota and the growth of the city manager and commission government throughout the country as examples. There are numerous charts and graphs illustrating these facts. From all of this data Dr. Chapin suggests certain tentative hypotheses regarding the extent to which we may predict the future course of governmental institutions and the nature of institutional growth, with the hope that further research will lead to verification, modification, or rejection of such hypotheses. The book is stimulating and merits special consideration by political scientists.

Alfred A. Knopf has brought out the second volume of Oswald Spengler's *The Decline of the West* (pp. 507). One might as well try to write a critique of modern society in a few hundred words as to attempt a summary of Spengler's great essay on a morphology of world history. The fundamentals of his philosophy were laid down in the

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first volume, published in translation some two years ago. This second volume, stated briefly, represents the application of the theory to the actual facts. Spengler surveys the history of cultures in its various essential aspects, laying great stress upon the history of Arabian culture. He draws a sharp distinction between the life of primitive man and the life of the later stages, and sees in the appearance of the great city centers the beginning of the end. It is quite natural that the discussion of the state and its composition, as well as the relation of the individual to the state, should take up a large part of the volume, and that the whole intricate economic organization of society should be subjected to close scrutiny. Here, as in the case of the first volume, exception can undoubtedly be taken by experts to innumerable statements and interpretations of the author. But there can be little doubt that Spengler's work will stand as one of the most daring and stimulating excursions into the field of social critique and the philosophy of history. It is particularly fortunate for the English reader that a book of such importance should have been so competently translated by Mr. C. F. Atkinson and so attractively made by the publisher. W. L. L.

Leon Guérard has, in *The Life and Death of an Ideal: France in the Classical Age* (Scribner's, pp. x, 391)—a somewhat cumbrous and not very revealing title—written what is, in effect, a sketch of the French spirit as displayed chiefly in French literature from the Renaissance through the Revolution. It is divided, naturally, into sections on the sixteenth, the seventeenth, and the eighteenth centuries; and, without being a catalogue and an appreciation of the various writers and schools of writers in those periods, it sometimes comes perilously near to that method of approach. Indeed, dealing as it does with such a multitude of names, it is difficult at times to avoid that snare of the manual writer. None the less it is an entertaining and, generally speaking, a readable volume, generous toward the classicism which it chronicles, friendly toward the scientific spirit, bitterly opposed to that ignorant sentimentalism to which Rousseau gave vogue and which is now so rampant among us. To one reader, at least, the sections dealing with the so-called "philosophers" of the eighteenth century seem the most interesting; yet there appear, even in that, certain omissions or slight treatment which rather weaken the effect of the whole. For, after all, why should Weisshaupt be given space and the Physiocrats be virtually neglected? And was Napoleon the "supreme classicist?" There is a

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brief bibliography, a chronological summary, and an adequate index, which add to the utility of the volume as an introduction to its subject.

W. C. A.

Ernest Barker's inaugural address at Cambridge University has been published in a little booklet entitled *The Study of Political Science and its Relation to Cognate Studies* (Cambridge, at the University Press, pp. 51). The relations to history, law, psychology, and economics are considered, but it is clear that Barker regards the affinity with philosophy, especially moral philosophy, as the most enduring and enamoring. "As I see it," he says, "political theory is primarily concerned with the purpose, or purposes, which man proposes to himself as a moral being, living in association with other moral beings, who at once desires and is forced to pursue his purpose or purposes in the medium of a common life. It is a study of ends, and of the modes of realization of those ends; and since ends have supreme value, and determine the value of other things which serve as their means, it is a study of value or values. Here it may be said to touch the sister science or theory which is called economics . . . . . Economics and politics thus run up together into philosophy; and moral philosophy (or moral science) is the basis, or apex, common to both. . . . . It is here, and in this conception of political theory as moral philosophy applied to the life of the whole community, that Plato and Aristotle still remain masters."

Now that China is fighting for jurisdictional rights and attempting to establish a system of government and law, it is interesting to learn the ideas of early Chinese thinkers concerning law. One of the best discussions of this subject is found in *The History of Political Theories of the Early Ts'in Dynasty*, by the famous scholar and statesmen Liang Ch'i Ch'ao. The chapters of this work dealing with the early conception of law have been made available for students of the western world in a French translation by Jean Escarra and Robert Germain entitled *La Conception de la Loi et les Théories des Légistes à la veille des Ts'in* (Chinese Booksellers Ltd., Peking, pp. xxxvii, 82). The work explains the ideas of a school of statesmen and philosophers in China known as the Legists "who for a time overshadowed Confucianism and helped by their thinking the formation of China's first autocratic empire in 220 B.C. It is curious to find how close their ideas stood to the Greco-Roman conception of law and how opposed they were to the

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traditional Chinese attitude." Reading of this conflict, "the thought occurs that had the Legists, defending the method of government by law, triumphed over those who fought for government by natural order, China's long history would have run a quite different course." The translators have added many notes explanatory of the text, and there is an introduction by M. Escarra giving a short and clear summary of the traditional concept which the Chinese have of law and of the conflict between law and the "rites" which stand for the natural order of things. In an appendix are collected various useful historical and bibliographical data.

Grain Growers' Coöperation in Western Canada, by H. S. Patton (Harvard University Press, pp. 471), is of special interest in view of the present discussion concerning farm relief legislation in the United States. The author not only explains the coöperative movement but tells of the part which the various organizations have played in the passing of important federal and provincial legislation, and in assuming the responsibilities of administration in three of the provinces. In the opinion of the author, actual participation in large scale business and finance and in the responsibilities of government has had "a sobering, educative effect, which has tended to make the attitude of the western farmers as a class toward other economic groups and institutions less one of suspicion and antagonism, and more one of intelligent accommodation."

A new edition of *Pages Choisies de Jean Jaurès*, with an introduction and notes by Paul Desanges and Luc Meriga, has been published (Les Editions Rieder, Paris, pp. 288). The book contains selections from the writings of the famous French socialist on various subjects such as socialism and liberty, a résumé of the principles of socialism, popular education, forces for peace, internationalism, art, and socialism, and a series of historical portraits, including sketches of Mirabeau, Marat, Hébert, Danton, and Robespierre.

A new edition of G. Lowes Dickinson's *Revolution and Reaction in Modern France*, a notable book long out of print, has been published by Brentano's (pp. 256). In this new edition the concluding chapter has been condensed and partly rewritten.

A third edition of Walter Dill Scott's *Influencing Men in Business*, revised and enlarged by Delton T. Howard, has been issued by the

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Ronald Press (pp. 172). Dealing, as it does, with the methods of making arguments and suggestions effective, the book contains pointers for the politician as well as for the business man.

Seven lectures delivered at the University of Chicago in commemoration of the sesquicentennial of the publication of the *Wealth of Nations* are brought together in *Adam Smith, 1776–1926* (University of Chicago Press, pp. ix, 241). The lecture on Smith as a moralist and philosopher, by Glenn R. Morrow, will be of most interest to political scientists.

Benjamin H. Hill; Secession and Reconstruction (University of Chicago Press, pp. ix, 330), by Haywood J. Pearce, Jr., is an impartial and otherwise adequate biography of a Southern leader who previously had been the subject of only a brief eulogistic sketch It will have importance for all students of American political history.

Politics and Education, by Leonard Nelson (Allen and Unwin, pp. 253), is a collection of addresses dealing with such interesting topics as "Democracy and Leadership" and "The Education of Leaders."

Harper and Brothers have published *A Short History of China*, by E. T. Williams (pp. xviii, 670). Professor Williams' qualifications for writing on China are above question; but this most recent work is disappointing. The space of two hundred and twenty pages is none too much for the political and cultural history of China before 1644; it becomes less than enough when two pages are given up to the superstitions of Shih Huang-ti and two more to the frivolities of Yang Kwei-fei. After 1644 the book deals almost exclusively with China's international relations and internal disorders. The work is well done, but it has all been done before.

Professor H. M. Vinacke's *History of the Far East in Modern Times* (Knopf, pp. xx, 479) limits its area to China, Japan, Korea, and Eastern Siberia, and the time to the period since 1800; less than a dozen pages being given to events before that date. Within these limits of time and space, the author has produced an extremely useful volume. The outstanding political events are treated adequately and with impartiality; but, throughout the book, major emphasis is laid upon the cultural, social, and economic developments which have resulted from the interplay of new forces in the affairs of the Orient.

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The Guilds of Peking, by John Stewart Burgess (Columbia University Press, pp. 270), including a study of forty-two contemporary professional craft and commercial guilds of Peking, interprets a part of the social-economic life of China, especially its non-political, extra-legal aspects. "The problem of a living" is the chief guild sanction, together with "religious fear, tradition, mutual advantage, and the personal influence of leaders." The limited scope of the work is compensated for by its thoroughness, and its interesting material is made intelligible by proper and critical attention to context and method.

The Stream of History, by Geoffrey Parsons (Scribner's, pp. ix, 590), is well named. It is a readable survey which aims to present the centuries "as a stream of mingled fact and theory, now clear, now muddied by passion and prejudice, eddying about this hero or that, and reaching each generation through the shifting channels of individual minds." The author has accomplished his aim in commendable fashion. The book is well written and shows the result of careful thought and interpretation. In other words, it is not merely a series of impressions dashed off in a hurry to give vent to half-baked ideas.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

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University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

Books

Allen, Wm. H. Al Smith's Tammany Hall. Pp. 352. N. Y.: Institute for Public Service.

Belmont, Perry. Le tarif douanier et les partis aux États-Unis, 1789–1927. Pp. 110. Paris: Payot.

Cameron, Jenks. The development of governmental forest control in the United States. (Institute for Govt. Research: Studies in Administration.) Pp. 480. Baltimore: Johns Hopkins Press.

Clemenceau, Georges. American reconstruction and the impeachment of President Johnson. N. Y.: Dial Press.

Conover, Milton. Working manual of original sources in American government. (Rev. ed.) Baltimore: Johns Hopkins Press.

Cook, Frederic W. The Massachusetts voter: his rights and duties of citizenship in state, county, city, and town. Pp. 188. Boston: Ginn.

Debs, Eugene V. Speeches of Eugene V. Debs. N. Y.: Int. Pubs.

Dodd, Walter F. State government. (Second ed.) Pp. xiv+604. N. Y.: Century Co.

Dorr, Rheta Childe. Susan B. Anthony. N. Y.: Stokes.

Enslow, Charles A. Law concerning women: being a résumé of federal and state laws affecting woman's property and civil rights. Pp. 153. Seattle: Raymer's Old Book Store.

Fine, Nathan. Labor and farmer parties in the United States, 1828–1928. Pp. 445. N. Y.: Rand School of Social Science.

Fisher, Irving. Prohibition still at its worst. N. Y.: Alcohol Information Committee.

Freund, Ernst. Cases on administrative law. (Second ed.) St. Paul: West Pub. Co.

Goldstein, Benjamin F. Marketing: a farmer's problem. Pp. 344. N. Y.: Macmillan.

Graves, W. Brooke. Readings in public opinion: its formation and control. N. Y.: Appleton.

Howell, George Coes. The case of whiskey. Altadena (Calif.): The Author.

Hoover, Herbert. The new day: campaign speeches of Herbert Hoover. Pp. x+228. Stanford Univ. Press.

Hutchison, David. The foundations of the constitution. Pp. 414. N. Y.: F. H. Hitchcock.

Johnsen, Julia E. Federal and state control of water power. Pp. 186. N. Y.: H. W. Wilson Co.

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Klein, Joseph J. Federal income taxation. N. Y.: John Wiley & Sons.

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